GOVERNANCE
in the 21st Century

LA GOUVERNANCE
au 21e siècle

Transactions of the Royal Society of Canada

Series VI, Volume X, 1999

Mémoires de la Société royale du Canada

Sixième série, tome X, 1999

Organized by / organisé par Gilles Paquet, MSRC
Edited by / sous la direction de David M. Hayne, FRSC

101-00272/

Governance in the 21st Century

La Gouvernance au 21e siècle

Governance in the 21st Century

Proceedings of a symposium held in November 1999
under the auspices of the Royal Society of Canada

La Gouvernance au 21e siècle

Actes d'un colloque tenu en novembre 1999 sous les
auspices de la Société royale du Canada

Organized by / organisé par

Gilles Paquet, MSRC

Edited by / sous la direction de

David M. Hayne, FRSC

Transactions of the Royal Society of Canada, Series VI, Volume X, 1999
Mémoires de la Société royale du Canada, Sixième série, Tome X, 1999

Published for the Royal Society of Canada by
University of Toronto Press

Toronto Buffalo London

© University of Toronto Press Incorporated 2000
Toronto Buffalo London

Printed in Canada

ISBN 0-8020-8411-7

Canadian Cataloguing in Publication Data

The National Library of Canada has catalogued this publication as follows:

Royal Society of Canada
Transactions of the Royal Society of Canada = Mémoires de la Société royale du Canada

Annual.
1882–
Text in English and French.
ISSN 0035-9122
ISBN 0-8020-8411-7 (ser. 6, v. 10)

1. Science – Canada – Collected works. I. Title. II. Title: Mémoires de la Société royale du Canada.

AS42.R66 081 C75-030369-7E

Données de catalogage avant publication (Canada)

Société royale du Canada
Transactions of the Royal Society of Canada = Mémoires de la Société royale du Canada.

Annuel.
1882–
Texte en anglais et en français.
ISSN 0035-9122
ISBN 0-8020-8411-7 (sér. 6, t. 10)

1. Sciences – Canada – Collections. I. Titre. II. Titre: Mémoires de la Société royale du Canada.

AS42.R66 081 C75-030369-7F

The opinions expressed in this publication are those of the authors and do not necessarily represent those of the Royal Society of Canada.

Les opinions qui sont exprimées dans cette publication sont celles des auteurs et ne reflètent pas nécessairement celles de la Société royale du Canada.

University of Toronto Press acknowledges the assistance to its publishing program of the Canada Council and the Ontario Arts Council.

We also acknowledge the financial support of the Government of Canada through the Book Publishing Industry Development Program (BPIDP) for our publishing activities.

Contents / Matières

Introduction 7
An Unsolicited Report to Canada's Leaders
Gilles Paquet, MSRC

The Changing Scenario in International Governance 23
Sylvia S. Ostry, FRSC

On Hemispheric Governance 37
Gilles Paquet, MSRC

To Whom Should Corporations Be Responsible? 81
Ideas for Improving Corporate Governance
J. Anthony VanDuzer

The End of Internal Empire: 117
The Emerging Aboriginal Policy Agenda
Alan C. Cairns, FRSC

Gouvernance et société civile 143
Andrée Lajoie, MSRC

The Governance of Science 161
John C. Polanyi, FRSC

Governance in Health Care: 171
Dysfunctions and Challenges
Douglas E. Angus and Monique Bégin, MSRC

Challenges to Military Culture 195
from Living in the 21st Century
Christopher Dandeker and Donna Winslow

Notes on Contributors / 219
Notices biographiques des collaborateurs

Gilles Paquet, MSRC

Introduction

The present volume records the papers delivered at the Society's Symposium held in Ottawa on Saturday, November 20, 1999. An introductory chapter has been added afterward to better define the spirit in which the 1999 symposium was conceived, designed and realized.

I would like to thank the Society's Program Committee and my colleagues from the Centre on Governance at the University of Ottawa for their assistance. I also thank the personnel of the Ottawa office of the Society (Nancy Schenk, Shawna Lawson, Sophie Buoro, Sandy Jackson and Nancy Lessard) for having taken care of all organizational matters.

I would also like to acknowledge the financial support of the following organizations: The Medical Research Council (Symposium), the Department of Canadian Heritage (Simultaneous Interpretation), and the EJLB Foundation, Power Corporation of Canada and Social Sciences and Humanities Research Council (Society initiatives).

Members of the Program Committee were:
T. Geoffrey Flynn, FRSC
David M. Hayne, FRSC
M. Patricia Marchak, FRSC
Gilles Paquet, MSRC (Chair)
Paul-Hubert Poirier, MSRC
Patricia Smart, MSRC

Le présent volume rassemble les communications présentées lors du colloque de la Société royale du Canada qui s'est tenu à Ottawa le 20 novembre 1999. Un chapitre d'introduction a été ajouté par la suite pour

mieux définir l'esprit dans lequel le colloque de 1999 a été conçu, planifié et réalisé.

Je voudrais remercier le Comité du programme de la Société royale et mes collègues du Centre d'études en gouvernance à l'Université d'Ottawa pour leur aide. Je remercie aussi le personnel du siège social de la Société à Ottawa (Nancy Schenk, Shawna Lawson, Sophie Buoro, Sandy Jackson et Nancy Lessard) qui s'est occupé de tous les aspects logistiques du colloque.

J'aimerais également remercier les organisations suivantes pour leur appui financier : le Conseil de recherches médicales (pour le colloque), le ministère du Patrimoine canadien (pour la traduction simultanée), ainsi que la fondation EJLB, Power Corporation of Canada et le Conseil de recherches en sciences humaines du Canada (pour les activités de la Société).

Le Comité du programme avait pour membres:
T. Geoffrey Flynn, FRSC
David M. Hayne, FRSC
M. Patricia Marchak, FRSC
Gilles Paquet, MSRC (Président)
Paul-Hubert Poirier, MSRC
Patricia Smart, MSRC

An Unsolicited Report to Canada's Leaders

Un rapport gracieusement offert aux leaders du Canada

A document prepared in December 1999 to serve as an introduction to the Transactions of the Royal Society of Canada 1999 Symposium that was held on November 20, 1999 in Ottawa on the general theme of GOVERNANCE IN THE 21ST CENTURY. The information supplied by Michael Dence was most helpful. The critical comments of Anne Burgess are gratefully acknowledged. I must also acknowledge the contribution of my colleagues at the Centre on Governance of the University of Ottawa who, unofficially, have contributed much to the success of the 1999 symposium of the Royal Society of Canada.

Abstract

The 1999 symposium of the Royal Society of Canada has built on the tradition of the Society's symposia, and on the momentum of the last few, but it has also been inspired by an action agenda. It was designed from the start as the basis for an unsolicited report to Canada's leaders. This introductory paper evokes the context in which the idea of this symposium has emerged, and explains why the general theme of governance was chosen. The paper then sketches the broad contours of the governance problematique, and argues that, since so many of the problems facing Canada today would appear to be ascribable to governance failures, it is likely that Canada's political, economic and civic leaders would find the report on the Society's deliberations most helpful. In closing, it is suggested that the proceedings of the 1999 symposium might become the first draft of an evolving manifesto, and might serve to promote governance studies in Canada.

Résumé

Le colloque de la Société royale du Canada 1999 a été conçu dans la tradition des colloques annuels de la Société et, plus particulièrement, dans la foulée des derniers colloques. Mais il a été surtout inspiré par un plan d'action. Dès le départ, on a prévu qu'il donnerait lieu à un rapport qui serait soumis aux leaders du Canada. Ce

texte d'introduction met le colloque en perspective. Il explique pourquoi la gouvernance a été choisie comme thème de la rencontre, il définit à grands traits la problématique de la gouvernance et, comme tant de problèmes auxquels le Canada fait face aujourd'hui sont attribuables à des erreurs de gouvernance, il présume que les leaders des secteurs public, privé et civique au Canada voudront avoir accès aux résultats des délibérations de la Société et en tirer profit. En conclusion, on émet le souhait que les actes du colloque 1999 deviennent la version préliminaire d'un manifeste sur la gouvernance et suscitent des études sur le sujet.

"Forget the names,
remember the stories"
Charles Handy

Introduction

The 1999 symposium of the Royal Society of Canada, like those of preceding years, has been designed with care to deal with issues of broad interest to the membership of the Society and Canadian society at large. Indeed, the questions raised on the occasion of the Society's annual symposia over the past decades constitute an echo of the serious reflections the fellowship has been engaged in, and cover most of the important issues of our times.

What is unusual about the 1999 symposium—the last one of the century—is therefore much less the criticality of the issues discussed, or the seriousness and depth of the treatment of these issues by Fellows and colleagues, but the *action agenda* that explicitly inspired it.

In the past, the Society has been satisfied with raising critical questions, presenting quality analyses of these challenging problems, and sharing the conclusions of its deliberations with the membership. The choice of themes explored in these symposia was obviously dictated in part by a variety of concerns (academic, social, political, etc.) shared by organizers, but also to a great extent by the *Zeitgeist* of the moment. They were also at times selected in response to an invitation from the government to assist in the formulation of policy (e.g., the 1964 symposium on a National Science Policy in response to a request for assistance from the Society by the then Minister of Industry, C.M. Drury). On occasion, the theme was even chosen with a view to alerting governments to some acute policy gaps (e.g., the 1968 symposium calling for a Canadian policy on scientific research, the 1986 symposium on the need for a Canadian AIDS strategy).

But even when the Society rose to the challenge of trying to take part in the public debate, it remained quite timid. Indeed, for most of the century, the Society did not feel it should try to shape the public agenda, or to mobilize Canadians in favour of certain action plans. This timidity is ascribable both to the plurality of views that the members of the Royal Society of Canada hold on most issues, a matter that has made robust

intervention on contentious matters by the Society rather hazardous, and to a certain reluctance to frontally challenge the governments on which the Society depends for its basic funding.

This modest strategy has not been ineffective. The Society's members have served as conduits to ensure that the results of the symposia's deliberations were broadly diffused. And even though the Society was quite prudent in its dealing with governments, it did not hesitate, on occasion, to make its views known with insistence when the issue was of a critical nature.

Background

Yet the pathbreaking work of Kenneth Hare (under the sponsorship of the Society) as early as 1970 (when he was a key player in the symposium on the Tundra Environment), and through the 1980s on a number of important studies about various health hazards (Acid Deposition in North America, Lead in Gasoline, the Safety of Ontario's Nuclear Reactors), has proved, if proof was indeed required, that the Society has the capability to provide advice, counsel, and guidance to governments on difficult policy issues.

Over the last decade or so, the Society has also undertaken a flurry of initiatives that have not received the attention they deserve: the important work of Alex Stewart with W.R. Bruce on the risk assessment of electric and magnetic fields, the key study on AIDS under the direction of Michel Chrétien, Horace Kriever and Ernest McCulloch, and the significant contribution on the global change front under the leadership of William Fyfe and Digby McLaren.

In parallel, the indefatigable Kenneth Hare continued his daunting evaluation task in a variety of dossiers (Nuclear Winter and Associated Effects, Carbon Dioxide Emission Reduction) and others like Harold Kalant (Tobacco, Nicotine and Addiction) followed in his footsteps. Indeed, this particular strand of the Society's activities proved to be the most resilient: more recently, there has been an extension of this work à la Hare, under the guidance of William Leiss, through the Expert Panel initiative. Through this initiative, the Society has provided advice and guidance to governments in dealing with many thorny situations (Asbestos, Health Canada's Primate Colony). The Expert Panels have

demonstrated anew that the Royal Society of Canada has the capabilities necessary to perform even the most difficult evaluative tasks.

Moreover, over the last decade, the Society has also turned its attention, on the occasion of the annual meetings, to broader and longer-run issues, raising critical questions about Canada's social technology and future prospects. Even the tone of the annual symposia has changed. While in earlier times difficult issues were always discussed *sotto voce*, more recent symposia have brought forth more vehement messages.

A good illustration of this might be the last two symposia organized by Geoffrey Flynn (Academy III) and John Woods (Academy II) respectively. Both these symposia have directly tackled major issues calling for action, but unfortunately, were all but ignored by national leaders. The 1997 Flynn symposium dealt with the well-being of Canada: the papers presented were incisive and damning. The health and education systems, the economy, the federal system, etc. were scrutinized and found in need of repair. The 1998 Woods symposium activities cast the net even more widely in probing different dimensions of human survivability in the 21st century. Ecosystem health, environmental scarcity and the ingenuity gap, marine resources, social cohesion, and the challenges forcing us to confront human extinction and survivability were analysed, and again there were calls for dramatic action to avoid disaster.

Building on the momentum developed in the last fifteen years, we would like to suggest a modest next step—to expand the Society's efforts to mobilize the fellowship, to reach out to the broader public forum, and to communicate directly the results of the Society's deliberations, for action, to the Prime Minister of Canada, to the House of Commons, and to the Premiers and Heads of provinces and territories in Canada, as well as a vast array of other national leaders in the private and civic sectors.

As for the choice of the theme of this more "activist" 1999 symposium, it emerged from a strong conviction that at the core of the problems revealed by the diagnoses presented in the symposia of the Royal Society of Canada, one finds mainly important *governance failures* in Canada. Whether one deals with Canada's economy, society, or polity, with the problems of health, education, innovation, environmental crises, or with more dramatic challenges like those forcing us to consider

human survivability or extinction, it is our view that much of the adequacy or inadequacy of our responses depends on the governance process we have chosen in Canada.

Yet, until recently, little attention has been given, in Canada, to the problem of governance. Some even find it a difficult concept to understand. It is hardly surprising therefore that the issue of governance has been neglected by our national leaders. This is unfortunate since the governance perspective is extremely rich when applied to the resolution of the problems identified in the last two symposia.

1. The Governance Challenge

The growing complexity of modern socio-economies is challenging all organizations, sectors, regions, and countries. It even poses important challenges to the global economy, society and polity. All these complex systems must forge capacities to manage more pro-actively in an increasingly turbulent environment; all are suffering to a certain degree from disconcertion and are performing much below expectations because of inadequate governance mechanisms. Simplistic functional approaches cannot solve these problems. The present crisis calls for an examination of governance per se.

Whether one probes the crises in the experience of large corporations, in education, in health care, in the science and technology systems, or in military affairs, or whether one tries to disentangle the problems of productivity plaguing Canada, or the challenges of managing mixed public-private-civic collaboration—all these issues demand a better understanding of ways in which governance might be improved.

Studying governance at any level (private, public and civic organizations, sectors, regions, continental or world arrangements) is probing the distribution of rights, obligations and powers that underpins the workings of these organizations, understanding how they coordinate their parallel activities and sustain their coherence, examining the ways in which inter-organizational coordination proceeds and the ways in which the requisite collaboration is effected (when there are a multiplicity of stakeholders whose fates are not necessarily positively correlated), exploring the sources of dysfunction and lacklustre performance in organizations and networks of organizations, and providing suggestions

as to ways of redesigning organizations or network architectures when governance is in need of repair.

So, governance refers to much more than just a guiding mechanism. It also of necessity ranges over phenomena that go much beyond the scope of the public sector or government. In a complex socio-economic system, more and more players or stakeholders become involved in the process of governance, as organizations become more and more interconnected. Moreover, in this new and more complex world in which organizations must evolve as a result of changes in the environment, the driving force behind governance is the learning power of the organization, its capacity to transform effectively mere information into meaningful and useful knowledge. Good governance translates into less disconcertion and more effective social learning.

The governance perspective is focusing on coordination; it is a clinical practice designed to intervene effectively to repair faltering organizations; it is an analytical framework providing a language of problem reformulation capable of translating the experience of failures into a language of problem solution; but fundamentally and more importantly, it is a different *manière de voir* providing insights into new ways of analysing complex systems, of understanding their malfunctions and of tackling problems of organization design likely to provide the necessary repairs.

There has been a significant transformation in the patterns of governance of all organizations and network systems over the last decades. For in order to cope with a turbulent environment, organizations must use governance strategically, in much the same way a surfer uses the wave: to learn faster, to adapt more quickly. This calls for noncentralisation, for an expropriation of the unilateral power to steer held by the top managers. Effective managers must be able to mobilize the full complement of imagination and resourcefulness in the heart and soul of each stakeholder: they must become team leaders, catalysts, animateurs. This in turn calls for lighter, more horizontal and modular structures, for the creation of networks and informal clan-like rapports.

In such organizations, deliberation and negotiation are everywhere. And the organizations evolve as these continuous processes of deliberation and negotiation enable them to learn new directions and objectives,

and the means to reach them, *as they proceed.* This leads to a more *distributed governance* because that is the most effective form of governance in an information socio-economy: the dispersion of power toward localized decision-making, and the evolving partnerships of decentralized flexible teams bound by moral contracts and reciprocal obligations, generating faster and more effective learning.

These perspectives are not new. But there has been a significant opposition to this drift in the governance process by those who have quickly understood that this could only mean a significant reduction in their power base. This has been experienced in the private, civic and public sectors, where traditional leaders have used a variety of stratagems to maintain centralized governance systems even when they appeared to be a major source of disconcertion and inefficiencies. Indeed, a whole new branch of studies would now be necessary to explore the various forms of pathology that the traditional elites' "dynamic conservatism" has generated through their efforts to prevent the governance systems from evolving.

While this sort of sabotage has led to failures in the private sector, it has led to crises and tragedies in the public and civic sectors where self-regulatory feedback mechanisms work much less effectively.

2. Reaching Canada's Leaders

In previous times, it would have been sufficient to forward the proceedings of symposia such as this one to the Emperor, the King or the Queen, for there lay the power to effect change. In modern times, in an information society of our sort, this is not sufficient. Political leaders certainly still have sufficient power to make a difference. This is especially true in the Canadian system, where a majority in a legislative assembly almost amounts to the capacity to exercise autocratic power. Consequently, political leaders must be part of the solution. Indeed, if they are not, they have the real negative power to quash or sterilize meaningful efforts emerging from the private or civic sectors. But it is not sufficient to inform the Sovereign.

Canada's leaders today are distributed widely across sectors and across hierarchical layers, and an organization chart capable of capturing the complex connectivity of the interactive forums making up our

complex socio-economic systems would probably resemble "a badly knotted fishnet with a multitude of nodes and cells of varying sizes, each linked to all the others directly or indirectly" (Victoria Hine).In such a context, leadership ceases to be top-down and hierarchical, and becomes truly lateral and transversal. Opinion-moulders and stakeholders of all sorts have a capacity to influence the process of governance. Indeed, one of the most important characteristics of *distributed governance* is the fact that no power holder has sufficient resources to impose its will. Collaboration and cooperation is a sine qua non for good governance.

In such a context, it is crucial that the message of the Royal Society of Canada radiates widely to all those who might make good use of it, be they from the private, civic or public sectors. This in turn calls for a two-step strategy: first, an effort to get the message out to political leaders across constituencies, for they remain a sort of *primus inter pares,* and second, an effort to disseminate the message more widely and in more subtle ways.

The first route is simple enough and must start with the Prime Minister of Canada and the House of Commons. Other political leaders in the different legislatures must also be reached, especially in a decentralized federation like Canada.

The second route is more complex to map out. One approach is to use the penetrative powers of the Royal Society of Canada to permeate the scholarly and scientific community, and make the members of this community aware of the need to develop research programs using this perspective. But this is hardly enough. We must find ways to reach out to the leaders of the private and civic sectors in a systematic way, and we must be able to provide them not only with raw information, but with the interpretation schemes necessary for them to be able to make the highest and best use of the information provided, and to help them transform it into the knowledge likely to trigger action.

3. The 1999 Symposium

Given the time limitation of a one-day symposium, it would have been most ineffective to attempt to launch an investigation of all aspects of governance in Canada. There is already significant literature on the subject that has evolved over the last few years. Even the Royal Society

of Canada began exploring these issues in a preliminary way in previous annual symposia.

It seemed more appropriate to raise explicitly a number of issues where *governance failures* were most apparent as a way of laying the groundwork for a discussion encompassing the sort of repairs that may be necessary to the whole Canadian governance system, both in the short and in the longer runs.

The first two papers sketch the problems raised by the broad transnational context within which Canada is nested, and the hemispheric circumstances within which Canada is of necessity embedded. These papers by Ostry and Paquet, respectively, suggest very explicit soft strategies that would appear to be promising action plans for Canada in the early part of the 21st century, but both require modifications to the present governance process.

The next three papers deal with specific problems pertaining to each of the private, public, and civic spheres. The authors of these papers (VanDuzer, Cairns, Lajoie) were not asked for an exhaustive review of all governance problems in these sectors, but rather to focus on *neuralgic* issues that might serve as *révélateurs* of both the most important governance challenges ahead, and the greatest difficulties in arriving at resolution of these issues in our pluralistic society.

In the private sector, Anthony VanDuzer shows the importance and the difficulty of changing the rules of the economic game so as to allow a smoother passage from shareholder capitalism to stakeholder capitalism. Alan Cairns underlines, through an analysis of the Aboriginal question, the need to face squarely the political challenges posed by a pluralistic urban Canada in the design of the new federalism. Andrée Lajoie chooses to play the role of devil's advocate, and raises questions about the realistic role that civil society can play in the new regime; her radical social democratic (and therefore statist) perspective, and her stance as a Quebec independentist, lead her to emphasize the limits to reliance on civil society forces in the design of the emerging Canadian governance system.

The last three papers deal with transversal issues (involving many layers of organizations in the three sectors) with the intention of illustrating both the futility of simplistic authoritarian solutions, and the

difficulty of defining the new covenants necessary for the governance of science (Polanyi), health (Angus and Bégin) and the military (Dandeker and Winslow) to proceed optimally.

In each case, the new moral contracts that are required among stakeholders are missing. In contrast, however, with the skeptical view expressed by Lajoie, it would appear that in all those areas the emerging role of the civil society is crucially important, and that there is a realistic hope that the necessary new social contracts might be negotiated pragmatically, successfully and quickly if the state were to abandon its centralizing and controlling tendencies.

4. An Evolving Manifesto

These eight papers point to an array of specific actions that need to be initiated if Canada is to prosper in the 21st century. But the lessons to be derived go much beyond these specific recommendations. These only illustrate the requirements of the new sort of distributed governance *en émergence*. The real focus should be on the generic pattern of transformation that the proposed correctives reveal and emphasize: a move toward distributed governance, horizontal structures, moral contracts, etc.

One cannot travel far along the route trying to raise the awareness of all Canadian leaders about these precise recommendations, but also about the new patterns of governance, without a manifesto, i.e., a formal and public declaration of principles and intentions, and a sketchy blueprint of how it is suggested one might help in effecting the smoothest transition to the new governance.

Such a manifesto cannot meaningfully emerge from a symposium that brought together a handful of scholars and a fraction of the fellowship of the Society. But the publication of the Transactions of the Royal Society of Canada annual symposium of 1999 can be used as a first draft of an evolving manifesto for the new perspective. This book might be used by the members of the Royal Society of Canada (from the three academies but also from the different regional chapters all over Canada) as a basis for discussion, and as an instrument to increase the policy communities' awareness of the importance of the governance perspective.

If this action is successful, it should lead to the creation of a network of nodes of interested scholars and practitioners throughout Canada who would participate in the development of a national research program and a range of action plans using this perspective.

Given the Society's geographical dispersion through the country, and its presence in the diverse sections of the academic world, the Royal Society of Canada should be able to play the role of animator in the development of this new investigative and action vista. A number of scholars and practitioners throughout Canada have already expressed interest in the idea of setting an interactive network linking them.

The presentation of the proceedings of the 1999 symposium as an unsolicited report to the Prime Minister, to the House of Commons and to the other Canadian leaders from all sectors should do much to draw attention to governance issues; it should help to focus debates at the local, regional, and national levels on the need to reform our governance mechanisms in a large number of domains; finally, it might be an occasion for the Society to reach out to the broader Canadian community in an effort to promote governance studies in Canada.

Conclusion

This action plan is a crucial and practical gamble, for unless the citizens become conscious of the centrality of governance issues, they are unlikely to be able to act effectively when the time comes to grant their consent to be governed in certain ways, or to express their dissent.

But this entails a long process of discussion with the citizenry that requires a commitment of a significant sort on the part of the Royal Society of Canada, and such a commitment must be backed by the requisite infrastructure and a parallel *révolution dans les esprits*.

The Society must provide the fellowship with a better capacity to communicate with Canada's leaders but also with the citizenry at large. Without these communicational facilities, no multilogue is possible. Moreover, the Society must build with the committed fellowship the requisite "negative capacity" (as Keats would call it), i.e., the capacity to keep going when things are going wrong. This entails the construction of the necessary support systems to help the Fellows both in taking a

creative part in this multilogue with the citizenry and in withstanding the chilling effect generated by setbacks in any change venture of this sort.

Roy Lewis has analysed this sort of situation in a satirical mode in his famous *What We Did to Father* (1960) in which he portrays the experience of evolution of a community of tree-dwelling apes discovering fire, inventing tools and being carried forward by progress away from the security of their trees. In such a transitional world, every unfortunate turn of events is always an occasion for reluctant participants to denounce progress and to seek to launch a "back to the trees" movement.

But resilience on such a road requires more than a solid infrastructure; it can only be assured by the fellows becoming true "savanturiers" (a crasis of *savant* and *aventurier*) as Raymond Queneau would call them.

This latter process of transsubstantiation of the fellowship may entail a redefinition of the selection process of fellows and our reminding the fellows of the commitment made in signing the Charter Book and accepting their diploma. But this is a matter for another day.

A Few Background Readings on Governance

Corkery, J. (ed.). *Governance: Concepts and Applications.* Brussells: The International Institute of Administrative Sciences, 1999.

Downs, A. et G. Paquet (eds.). *Les défis de gouvernance à l'aube du XXI^e siècle.* Montréal: Association des économistes québécois, 2000.

Kooiman, J. (ed.). *Modern Governance.* London: Sage Publications, 1993.

March, J.G. and J.P. Olsen. *Democratic Governance.* New York: The Free Press, 1995.

Pal, L.A. (ed.). *How Ottawa Spends 1999-2000—Shape Shifting: Canadian Governance toward the 21st Century.* Don Mills: Oxford University Press, 1999.

Paquet, G. *Governance through Social Learning.* Ottawa: The University of Ottawa Press, 1999.

Rosell, S.A. (ed.). *Renewing Governance.* Don Mills: Oxford University Press, 1999.

Sylvia S. Ostry

Sylvia S. Ostry, FRSC

The Need for Coherence in the Governance of the Global Economy

Abstract

Globalization, or the deepening integration of the global economy, represents a formidable challenge for the postwar institutions designed to ensure international economic stability. This challenge and the need for reform and reinforcement of the governance structure will be illustrated by analysis of the trade institution, the World Trade Organization, the successor to the GATT (General Agreement on Tariffs and Trade). The postwar trinity—the GATT, the International Monetary Fund and the World Bank—pursued independent policies with little overall coordination or policy coherence. The need for improved coherence, both because of ongoing globalization and a radically new paradigm of trade, will be analysed. But improved global stability will not suffice if systemic issues, especially environmentalism, are not effectively integrated into the global governance structure.

Résumé

La mondialisation, c'est-à-dire l'intégration de plus en plus poussée de l'économie à l'échelle planétaire, constitue un monumental défi pour les institutions de

l'après-guerre qui avaient été conçues pour assurer une stabilité économique internationale. Ce défi, allié à la nécessité de remanier et de renforcer la structure de la gouvernance, sera illustré par l'analyse d'une institution l'Organisation mondiale du commerce, qui a succédé au GATT (l'Accord général sur les tarifs douaniers et le commerce). Chacun des membres de la trinité de l'après-guerre—le GATT, le Fonds monétaire international et la Banque mondiale—a poursuivi ses politiques chacun de son côté sans guère de coordination d'ensemble ni d'homogénéité entre elles. Nous analyserons la nécessité d'une meilleure homogénéité, à la fois en raison de la mondialisation galopante et d'un paradigme inédit en matière de relations commerciales. En revanche, améliorer la stabilité à l'échelle planétaire ne suffira pas si les dossiers systémiques, et en particulier celui de l'environnement, ne sont pas véritablement intégrés à la structure de gouvernance planétaire.

Introduction

The financial crisis in Asia in 1997 triggered a lively and sometimes raucous debate on the need to redesign the so-called architecture of the postwar Bretton Woods institutions, the International Monetary Fund and the World Bank. What has resulted thus far is most aptly described as improved plumbing and interior design. One should not disparage these incremental improvements although basic issues, especially overlap between the two institutions and the longer-term role of the private sector in burden-sharing, have not been confronted and likely won't be until the next financial crisis.

But that's not what I want to talk about today. By a strange twist of events it may be that the "crisis" confronting the first post-coldwar institution, the World Trade Organization (WTO), could prove to be the catalyst for a serious rethinking of the existing architecture. Fifty years ago, when the buildings were erected, the word globalization didn't exist and the environment did not appear in any of the construction documents.

What I'd like to do today is to begin with a brief account of the creation of the WTO and how it has become a magnet for dissent, before turning to the broader question of international governance.

The Uruguay Round

After repeated efforts by the Americans beginning in the early 1980s, the Uruguay Round was launched in Punta del Este in September 1986 and formally concluded in Marrakesh, Morocco, in April 1994, several years later than the target completion date originally announced. The extraordinary difficulty in both initiating and completing the Round stemmed essentially from two fundamental factors: the nearly insuperable problem of finishing the unfinished business of past negotiations, most of all agriculture; and the equally contentious issue of introducing quite new agenda items, notably trade in services and intellectual property and, though in a more limited way, investment. The Europeans blocked the launch to avoid coming to grips with the Common Agricultural Policy (CAP), and a number of developing countries, led by Brazil and India, were bitterly opposed to including these so-called "new issues". In the end the final trade-off involved a North-South deal across the old and

new issues, a deal which transformed the world trading system.

Although the "new issues" are not identical—obviously negotiations on telecommunications or financial services differ from intellectual property rights—they do have one common or generic characteristic: they involve not the border barriers of the original GATT but domestic regulatory and legal systems embedded in the institutional infrastructure of the economy. The Uruguay Round thus provided significant impetus to the deepening integration of the global economy or, as it's now termed, globalization. The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the postwar years with its focus on border barriers. The WTO has shifted trade policy from the GATT model of negative regulation—what governments must not do—to positive regulation or what governments must do. Moreover, the WTO dispute settlement procedures—"the most ambitious worldwide system for the settlement of disputes among more than 130 states ever adopted in the history of international law"1—provides the ultimate guarantee of protection for the negotiated rules. Many legal scholars see the WTO as embedding a global constitution overseen by a supranational juridical system—a point I'll return to later.

The inclusion of the new issues in the Uruguay Round was an American initiative and this policy agenda was largely driven by American multinationals who were market leaders in the services and high tech sectors. These corporations made it clear to the government that without a fundamental rebalancing of the GATT they would not continue to support a multilateral policy but would prefer a bilateral or regional track. But they didn't just talk the talk, they also walked the walk, organizing business coalitions in support of services and intellectual property in Europe and Japan as well as in some smaller OECD countries. The activism paid off and it's fair to say that American MNEs played a key—perhaps even the key—role in establishing the new global policy system.

However, it's also important to underline that by the end of the 1980s another major change in economic policy-making was underway. The revolution of Ronald Thatcherism which began in the OECD countries was adopted by many developing countries by the onset of the 1990s and this greatly reduced the resistance to negotiation of the new issues. Put

another way, in January 1995 at the official birth of the WTO, as a result of a favorable confluence of different forces, support by governments for domestic and international liberalization as a dominant ideological paradigm seemed near-universal.

Because of the focus of attention on the "new issues" and economic regulatory reform, the negotiations on social regulation concerning product standards, health and safety measures and environment received little publicity and little attention from the senior policy ranks. In the OECD countries social regulation started in the late 1960s and has been accelerating since then. The OECD has called the phenomenon "regulatory inflation." One could—with a bit of a stretch perhaps—say that the postwar economic regulatory state of the advanced countries is withering away, while the social regulatory state is alive, well, and growing. While there are a number of reasons for this development, a major factor has been the increasing influence of non-governmental organizations (NGOs). These advocacy coalitions are a key element in the change in ambience of trade policy today. From the apparent globaphilia of 1995 we are now witness to a rising chorus of globaphobia. A brief digression on the role of these new actors in the defeat of an internationl negotiation, the Multilateral Agreement on Investment or MAI, illustrates their remarkable role in the policy domain.

The New Actors: The NGOs

In October 1997, forty-seven NGOs from twenty-three countries and five continents met in Paris at OECD headquarters. The consultation had been arranged at the request of the World Wildlife Fund and some national representatives who had been lobbied by domestic advocacy organizations. The NGOs argued that the MAI would undermine sustainable development and national sovereignty. The most powerful case for this argument concerned the MAI's investor protection mechanism. This replicated the investment provisions in the North American Free Trade Agreement (NAFTA) which included procedures for resolving disputes by which private parties as well as governments could take action and adopted a very broad definition of investment expropriation, so broad it could lead to investor claims against government regulation in, say, environmental or health areas, which negatively affect the value

of investment. In Canada, American corporations had launched several cases against the government that aroused a storm of opposition led by a coalition of NGOs. These same NGOs were among the most prominent in Paris in October 1997.

After the consultation the groups at the meeting organized an anti-MAI coalition and launched an international campaign on the internet to stop the negotiations. Groups in Canada and the United States provided a constant flow of information to websites in many countries to coordinate the campaign. By October 1998 the negotiations had been suspended and in December, after the official withdrawal of the French government at the request of the red-green members of the coalition, they were officially terminated. (The action of the French government is not without significance. While North American greens have chosen an advocacy route to contest the market for policy ideas, the European environmentalists formed political parties and greens are now members of government coalitions in four EU countries: Germany, France, Italy and Finland as well as increasingly prominent in the European parliament.)

Of course there were a number of reasons why the MAI failed but there seems little doubt that the NGOs played a key role. It's worth underlining the importance of the environmental issue because it echoed earlier events in Geneva. In 1991, after a panel ruling that the US violated its GATT obligations by banning Mexican tuna caught by a process which killed dolphins, American environmental groups mounted a major attack on GATT-zilla. The campaign in Washington raged against the cabal of faceless bureaucrats in Geneva who were undermining American sovereignty and subverting democracy. Although GATT survived and the Uruguay Round created the WTO, many of the themes, albeit for the most part in less colourful terms, are at the core of the continuing environmentalist critique of the WTO. While the greens are not the only critics of the WTO, they have been most effective in mobilizing support among a wide range of other advocacy groups who, although for different reasons, see the WTO as an institution captured by and serving only corporate interests.

As noted, the campaign against the MAI was greatly facilitated by the internet as use accelerated in the 1990s. While building on the experience of the anti-MAI campaign, the mobilization of dissent against the

WTO Seattle meeting beginning on November 30 is however, far broader and deeper. A survey of a large number of websites focused on Seattle suggests that there are two broad categories of NGO coalitions or networks—what might be termed "mobilization networks" whose chief objective is to rally support for a specific set of activities—and "technical networks" designed to facilitate and provide specific information.

Two examples of mobilization networks preparing for Seattle are the International Civil Society Opposing a Millennium Round (ICS) and People's Global Action (PGA). The ICS claims to represent more than 600 NGOs from over seventy-five countries. The list is attached to their statement and includes environmentalists, religious and human rights organizations, labour coalitions, student groups, etc. from all OECD countries and a large number of developing countries. The PGA, formed in Geneva in February 1998, is an equally broad coalition dedicated to organizing a conference in Seattle on November 30, at the outset of the WTO meetings. On the internet the conference is termed N30. The PGA organized a "carnival against capitalism" in the city of London on June 18, 1999. The J18 carnival, as reported in *The Daily Telegraph*, deteriorated into violence, resulting in more than six hours of rioting and vandalism in the financial district.

The message circulated by both these NGOs, as well as a large number of others, is very similar. They charge that the WTO is dominated by transnational corporations; that rules and procedures are undemocratic and untransparent; and that it is harming the environment and creating increasing inequality. The WTO has become a magnet for dissent and a target for the inchoate but growing backlash against globalization or corporate globalization as its opponents call it. This core message is not dissimilar to that of the Council of Canadians or the US-based Preamble Centre in its new publication *Globalization: A Primer*, or the book released by Ralph Nader's Public Citizen, Whose Trade Organization: *Corporate Globalization and the Erosion of Democracy*.

In marked contrast to the mobilization networks, the technical networks' (such as, for example, the Geneva-based Centre for International Environmental Law and the Institute for Global Communications in Palo Alto, California) objectives include innovation in software to

support NGOs' special needs. The primary purpose of these, and a number of similar networks, is to facilitate the greater participation of NGOs in the policy process by providing a continuously updated flow of strategic and technical information. Since information is a key asset in the policy process, the basic objective of these technical networks is to ensure that the market for policy ideas is contestable and no longer the sole preserve of government and the traditional lobbies.

It seems clear, even from this brief survey, that the most dramatic change in the policy ambience today is the growing influence of new transnational actors, adept at using and diffusing information and coordinating strategy around the globe. It may well be that their role in Seattle will be regarded by the media and the public as street theatre but the play won't end when the ministers return home. As I said, it's difficult at this point in time to evaluate the longer-run impact. Perhaps the best way to express it is by quoting the 1960s song:

"Something's happening here
What it is ain't exactly clear..."

But the new prominence of the NGOs in trade policy-making should be evaluated in a broader context. Thus it's important to note that the American business community—in marked contrast to their activist transnational role in the Uruguay Round—has maintained a low profile with respect to the upcoming WTO negotiations. The same might be said of Canadian business. The current lack of activism is remarkable and one can only speculate as to the reasons. Perhaps global business can directly negotiate with host governments, so why bother with lengthy and tedious WTO negotiations?

This lack of leadership is also apparent in the case of the US government and the two phenomena are probably interrelated. Unlike all previous multilateral negotiations led by the United States, the American objectives for a new round are minimal and defensive. However, in response to domestic pressures the Administration is proposing that both environmental and labour standards must be on the agenda. The European Union, while largely in agreement with this proposal, has been far more assertive, including new issues such as investment and competition

policy and initiatives to reduce the marginalization of the poorest developing countries. No doubt some compromise will be worked out but it will not be so easy to bridge what appear to be growing political and cultural transatlantic divisions—captured by the current fracas over genetically modified food—which in part reflect the growing influence of the Green Parties in European politics.

Finally, developing countries are now far better organized and informed than in any previous negotiation, reflecting in part a spin-off of the information revolution. A number of new "southern" NGOs disseminate information on WTO issues and are actively mobilizing opposition to the inclusion of the environment and labour standards in the WTO negotiations. Long-standing and influential development groups such as Christian Aid and Oxfam largely support this stance. These NGOs and coalitions of LDC governments argue that the benefits of the Uruguay Round went mainly to the advanced countries and that they cannot implement many of their commitments because of lack of technical expertise. They want a "development round" to redress what they argue is a fundamental bias in the WTO system.

Thus the prospects for North-South compromise at present look rather dim. A transatlantic compromise looks difficult. Business is passive and the NGOs are gearing up for a major event. The most cautious summary would be that the future of the world trading system is uncertain. So what needs to be done? I would argue that a minimal Millennium or Seattle or whatever Round would not be a disaster. Indeed, given the uncertainty, it might be regarded as not minimal but as good as it can get. But—and this is a big but—over the longer run the multilateral trading system is unlikely to survive if Seattle does not launch a process for the reform of the WTO and of the architecture of international governance. So let me turn to that in my final remarks.

Reform of the WTO and International Governance

The political compact which created the post-war economic architecture, the Bretton Woods institutions and what was to have been the International Trade Organization or ITO, rested on an assurance that international rules would preserve space for domestic policy autonomy. The ITO never came into existence, but one piece of it, the GATT,

survived and indeed thrived. The objectives of the GATT were liberalizing trade through successive multilateral negotiations aimed at reducing border barriers and creating rules to govern and sustain the liberalizing momentum. The domestic policy space, defined in terms of economic regulation and the maintenance of full employment, was safeguarded by rules to permit temporary blockage of imports under clearly specified terms. These rules were intended to provide a buffer or interface between the international objective of sustained liberalization and the objectives of domestic policy, in other words sovereignty. But with the Uruguay Round, the central domain of trade policy became domestic regulation and legal systems, and the definition of domestic policy space today not only differs from that of the postwar period but also differs significantly among the members of the WTO. The protective buffers have become protectionist tools, and in any case are largely irrelevant as a means of safeguarding the diverse and changing concept of sovereignty among the 130 plus members of the WTO.

It is not simply the move inside the border which represents the radical break between the GATT and the WTO. Of equal significance, as mentioned earlier, is the greatly strengthened Dispute Settlement Mechanism. It's important to note that the business groups who lobbied so successfully to include intellectual property in the Uruguay Round did so because the UN agency, the World Intellectual Property Organization (WIPO) has no dispute mechanism to enforce these rights. And, of course, the same is true for labour rights in the ILO or environmental policy in UNEP, the United Nations Environment Program. That's why the WTO is not simply a magnet for discontent but also for achieving other policy objectives.

Since the establishment of the WTO, the most high-profile and contentious disputes have concerned environmental or food safety issues. The WTO does not regulate environmental or social policy but its rules, negotiated in the original GATT consensus, seek to constrain the trade-restrictive impact of domestic regulation in order to prevent such regulation being used as a disguised barrier to trade. In recent cases, dispute panels and especially the Appellate Body (AB) have been forced to interpret the WTO rules which govern domestic environmental or food safety policies. Thus as is the case with all courts and all legal rules

in such complex areas, that interpretation has essentially involved these judges in an international institution making law that defines the boundary for domestic policy space.

And, not surprisingly, this has spawned the criticism, especially but not only by NGOs, that the WTO suffers a democratic deficit. Trade ministers are now learning that these arguments for "democratization" carry considerable weight among an increasing number of people in member countries. Crafting a policy response to the NGO demand for a role in the WTO, an intergovernmental institution, will not be easy and a key issue will be the need for transparency and accountability of these non-governmental bodies.

Even if the "democracy" issue is solved, the more basic problem of reconciling the WTO trade rules with the new social regulatory state remains. The task of achieving consensus in such a large and diverse institution constitutes a formidable barrier to change. I've made a number of suggestions for WTO reform in various publications so I won't take the time to review them here. Most fundamental in my view is to establish a smaller body or Executive Committee to provide a forum, at both the ministerial and official level, for policy discussion including the need for forging a new international contract which would then have to be ratified by all member countries. An upgrading of the WTO's research capability to service the Executive Committee would facilitate research networks with other institutions and with NGOs and, over time, help promote consensus. An increase in technical assistance resources is also essential if developing countries are to cope with the deeper integration agenda. This would also facilitate coordination with the World Bank's new development focus on what is now called "capacity building".

The primary objective of WTO reform—i.e., establishing the boundary between domestic policy and international rules—is most urgent in the environmental domain. The basic issue is not whether trade and the environment are linked (they are, in both positive and negative ways) but that using trade policy as an instrument of environmental policy is both ineffective in terms of achieving environmental objectives and costly in terms of growth. However, in the absence of a strong environmental institution (which UNEP is not) redefining the boundary between

domestic and international policies will not work and the WTO will continue to be under attack. Only a new WEO (World Environmental Organization) with a clearly defined mandate in this domain will reduce the demand for second-best policy substitutes like trade sanctions. Negotiations between WTO and WEO ministers could then define the rules to govern the linkage between trade and multilateral environmental agreements.

And a similar case can be made for the labour standards issue. The trade unions and other NGOs in the OECD countries are responding to the backlash against growing income inequality within their countries. Trade and investment liberalization has increased income disparities in the industrialized countries although the estimates of impact differ among economic experts and technological change has played and will play a far more significant role in reducing the demand for the unskilled and generating ever-larger rewards for education and training. While the demand for linking labour standards to trade is usually couched in terms of justice or ethics, the impact on developing countries could be serious. Once again, if the objective is to improve working arrangements in developing countries the mandate rests with the International Labour Organization (ILO). But the ILO has no power of enforcement. Moreover, many of its members—especially developing countries—have resisted repeated attempts to improve enforcement capacity. Many of these same countries oppose incorporating labour standards into the WTO. This dilemma must be resolved with the ILO monitoring and enforcement mechanisms strengthened. A stronger ILO and a reformed WTO would encourage coordination between trade and labour ministers, and a better understanding of the need for domestic policies to cope with the ongoing impact of globalization.

In sum, my argument is that if the WTO remains the magnet for dissent and policy overload, the global rules-based trading system is at risk. Reform of the WTO itself will be necessary but not sufficient to adapt the institution to the ongoing pressures of globalization. The reform of other institutions will be required to ensure coordination of international policy which must include environmental and social policy—to mention only two examples, and there are a number of others.

Will the threat to the trading system serve as a catalyst to rethinking

international governance? Obviously I can't answer that question but I was very pleased to learn that the Canadian government has submitted a proposal to ministers in Seattle to establish a working group on international policy coherence. If agreed, maybe the debate on a new international architecture could begin. Keep tuned.

Note

1. Ernst-Ulrich Petersmann, "From the Hobbesian International Law of Coexistence to Modern Integration Law: The WTO Dispute Settlement System", *The Journal of International Economic Law*, Vol. 1, No. 2, June 1998, p. 183.

Gilles Paquet

Gilles Paquet, MSRC

On Hemispheric Governance

The assistance and incessant probing of Monica Gattinger, the comments of Anne Burgess, George Emery and Robin Higham, and the help of Dana Campbell, Diane Fontaine, Marie Rakos and Marie Saumure have been most valuable. John M. Curtis's counsels have been useful as always but as almost always he might wish to put many sharps and flats on the use I have made of them.

Abstract

Canada's life is dominated by its embeddedness in the Americas. This makes hemispheric governance a matter of crucial interest for Canadians, for the governance regime that is likely to evolve in the Americas will be an echo chamber through which global forces will reach Canada, and an instrument through which Canada can exercise influence over its circumstances. This paper uses a geo-governance perspective to analyse Canada's predicament. It shows that Canada has "rediscovered" the Americas recently, but has not played its cards as well as it might have in dealing with the Americas. Integration of Canada within the Americas is bound to proceed slowly and *par morceau*, and this is not necessarily as bad as has been

suggested by some economists. Piecemeal regional/regime integration may be the best strategy after all, for *distributed governance* is the best strategy in a learning economy. This does not mean that the state does not have a role to play, but rather that it must play a role as a catalyst. What is a realistic strategy for a medium-power country like Canada in the Americas? A soft and oblique one based on networking with the other medium-power countries of the hemisphere through the Organization of American States in the longer run and a focus on Central America in the shorter run through the Association of Caribbean States, on good use of networks and regimes, and on the will to develop the new governance and management capacities required to do the job. There is no reason to believe that Canada is taking this challenge seriously, and yet it should.

Résumé

La vie du Canada est dominée par son enkystement dans les Amériques. Voilà pourquoi les Canadiens doivent s'intéresser à la gouvernance des Amériques: cette gouvernance est la boîte de résonance à travers laquelle les grands courants mondiaux vont venir frapper le Canada, mais aussi le levier qui pourrait aider le Canada à exercer une influence plus considérable sur son contexte. On utilise une perspective de géo-gouvernance pour analyser les défis auxquels le Canada fait face. On montre que le Canada a "redécouvert" les Amériques récemment, mais qu'il ne joue pas très bien ses cartes dans ce jeu hémisphérique. L'intégration du Canada dans les Amériques est condamnée à se faire lentement et par morceau, et ceci n'est pas nécessairement aussi deplorable que certains économistes le pensent. Une intégration par région et par régime peut fort bien être désirable, parce qu'une *gouvernance distribuée* est la meilleure stratégie dans une économie fondée sur l'apprentissage. Cela ne veut pas dire que l'état n'a plus de rôle à jouer, mais plutôt qu'il doit jouer un rôle de catalyseur. Que pourrait être une stratégie réaliste pour le Canada dans les Amériques? Une approche en douce et oblique construite sur le réseautage avec les autres pays de moyenne puissance de l'hémisphère par le truchement du forum que fournit l'Organisation des Etats Américains à plus long terme et un accent mis sur l'Amérique centrale à plus court terme en faisant bon usage de l'Association des Etats de la Caraïbe, sur des régimes partiels et régionalisés de gouvernance, et sur une volonté politique de développer les capacités nouvelles nécessaires tant au plan de la gouvernance que de la gestion. Il n'y a pas de raisons de croire que le Canada prend ces défis au sérieux et pourtant il devrait.

"We kick against the pricks of our necessity.
Yet, strangely, we are in love with this necessity.
Our natural mode is therefore not compromise
but "irony"—the inescapable response to the presence
and pressures of *opposites in tension*"
Malcolm Ross (1954)

Introduction

Canadians have a distorted view of the world system and of their own place in it. This is inherited both from the post-World War II experience, when Canada stood tall among nations because of the fact that so many of them had been badly damaged during the 1939-45 war period, and from the activist Pearson era when Canada played a leadership role in world affairs. One may get a visual sense of this aggrandized self-portrait in the maps of the world as presented in Air Canada in-flight magazines. In these maps, Toronto, Montréal and Vancouver are nodes toward which every portion of the world would appear to converge.

A less parochial perspective would reveal that Canada, as a middle-power country, is a relatively minor actor on the world scene, and that it is increasingly losing some of its power to transnational institutions. Canada still represents a small if not insignificant portion of world production and trade. But over the last forty years, the relative importance of both Canada's government and banks has declined considerably on the world scene. Canada has had to adjust more and more to external constraints. Consequently, Canada's capacity to adapt to external exigencies has had to increase. Therefore a keener appreciation of the causal texture of Canada's environment has become quite crucial if one is to venture a diagnosis about the prospects for Canada in the next century. Indeed, the sort of effective governance likely to evolve in Canada will be dictated to a large extent by this context.

In this paper, there will be no attempt to reconstruct the entire web of connections linking Canada to every other portion of the world scene. Rather, the focus will be on Canada's hemispheric circumstances. The rationale for this choice is that Canada is embedded in the Americas. The geopolitical context of the country is obviously broader than Pan-America: Canada is a member of many international clubs (OECD, G-7,

Commonwealth, Francophonie, etc.); it is linked historically, culturally and politically to European powers; it is connected through immigration and increasing trade flows with Asia; and it is having some impact on Africa through its aid programs. But mostly, Canada's life is dominated by its embeddedness in the Americas.

This makes the hemispheric governance system a matter of crucial interest for Canadians, for the governance regime that is likely to evolve in the Americas will not only be an important echo chamber through which global forces will reach Canada, but also an instrument through which Canada may be able to participate actively in global governance issues, and to exercise more influence over its circumstances in the next century.

The first section of the paper presents a primer on geo-governance to help define the framework within which we intend to analyse Canada's predicament. The two sections that follow briefly sketch Canada's position within the six Americas, and examine the hemispheric dynamics as they are unfolding. The next two sections review some of the challenges and choices generated by hemispheric governance issues, sketch the most likely scenario–a distributed governance scenario through flexible regimes for the Americas–, examine the impact of this prospective scenario on Canadian governance, and the action agenda it calls for. The conclusion underlines the reasons why the process of emerging hemispheric governance is bound to be slow, and requires considerable creative politics.

1. A Primer on Geo-governance

There are a number of models of geo-governance in good currency, but none of them is entirely satisfactory. By geo-governance (i.e., territorially-based governance), we refer to the ways in which the global order guides itself through a terrain inhabited by other territorially-based power houses. Governance refers to the sum of the many ways in which (1) individuals and institutions, public, private and civic, manage their common affairs, (2) the diverse interests accommodate and resolve their differences, and (3) these many actors and organizations are involved in a continuing process of formal and informal competition, cooperation, and learning (Carlsson and Ramphal 1995).

On the one hand, the old Westphalian nation-state model, and the United Nations Charter model based on sovereign nation states, do not seem to be well adapted to the new world of global interconnectedness. On the other hand, the model of cosmopolitan democracy, based on basic ligatures binding together the new world order, remains somewhat utopian (Held 1995).

Throughout the 20th century, geopolitics has attempted to make sense of this complex evolving political terrain, and to define a reasoned map of the power world. This map has echoed the dominant power/knowledge infrastructures of the day. It was shaped by imperialism in the early part of the 20th century, by the great East-West divide and the Cold War in the post-World War II period, and by the acceleration of technical change, globalization, and the erosion of the powers of the Westphalian nation state in the more recent past. During these different periods, geopolitics have proposed different faultlines of competition and cooperation, various linkages between the local/regional and the world as a whole, and different discourses to rationalize them.

But, as the compilers of a recent reader in geopolitics boldly state, "geo-politics is not a science", it is "a field of contestation" (Ò Tuathail et al 1998). It often presents only very partial images of the geo-governance process. This is never more true than in the recent past. Since the fall of the Berlin wall, new forces have dramatically transformed the pattern of geo-governance: new forms and new levels of governance have emerged.

The extensive recent literature on geo-governance defines the faultlines and interfaces in many different ways: Luttwak suggests that economic priorities and modalities are dominant; Luke insists that security and political issues continue to dominate the scene; Huntington proposes that clashes of civilization are the defining interfaces (Luttwak 1990; Luke 1991; Huntington 1993). While each of these arguments has merits, they are also incomplete. At best they suggest that each of these families of forces may at times dominate the scene. But strict geo-economic, geo-security and geo-civilizational arguments remain unpersuasive in accounting for the existing pattern of geo-governance. A *problématique* that blends these three sets of forces and encompasses the diverse sites in which the authority has become diffused throughout the

economic, political and social spheres is much more promising as a way to explore the geo-governance dynamics at any one place or time within the present world order (Paquet 1997).

Economists have explored this terrain for quite some time. François Perroux and Kenneth Boulding have proposed a simple conceptual scheme to analyse it (Perroux 1960; Boulding 1970). Both identified three generic ensembles of organizations more or less dominated by a different mechanism of integration: *quid pro quo exchange* (market economy), *coercion* (polity), and *gift or solidarity* (community and society). These mechanisms had been explored by Karl Polanyi (1957) as dominant features of the concrete socio-economies of the past. Perroux and Boulding fleshed out the idea and applied it to the modern context.

To map out this terrain, Boulding used a simple triangle, with each of these mechanisms of integration in its purest form at one of the apexes; all the inner territory represented organizations and institutions embodying different mixes of these integrative mechanisms. A slightly modified version of this sort of triangle is presented in Figure 1.

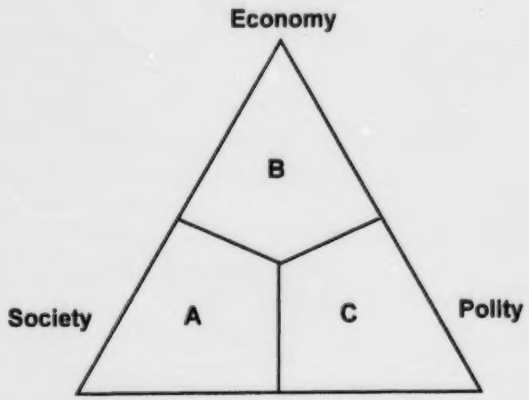


Figure 1

This approach provides a rough mapping of the organizational terrain into three domains where the rules, arrangements or mechanisms of coordination are based on different principles: the economic/market

domain (B) where supply and demand forces and the price mechanism are the norms; the state domain (C) where coercion and redistribution rule; and the civil society domain (A) where cooperation, reciprocity and solidarity are the integrating principles. This corresponds roughly to the standard partitioning of human organizations into economy, polity, and society.

In the geo-governance process, these three sectors need not have equal weight. Looking at the Canadian scene of a century ago, it is obvious that the state portion was quite limited at the time. The terrain was dominated by the other two sets of organizations. From the late 19th century to the 1970s, government grew in importance to the point where probably half of the *measured* activities fell into the general ambit of state and state-related activities. The boundaries have been displaced accordingly over time. More recently, there has been a vigorous counter-movement of privatization and deregulation that has caused a reduction of the state sector, and a reverse shift of the boundaries (Paquet 1996).

There has been a tendency, in parallel with these swings that give more valence to one or another of the family of integration mechanisms, for the new socio-economy to trigger the development of an ever larger number of *mixed* institutions, blending these different mechanisms to some extent (market-based public regulation, public-private-civic partnering, etc.) in order to provide the necessary signposts and orientation maps. In the recent past, this has translated into a much denser "filling in" of the Boulding triangle. A variety of arrangements now exist that provide for compromises between the different principles of integration. Mixed institutions have been designed that are capable of providing the basis for cooperation, harmonization, concertation, and even for co-decision mechanisms that involve elements from the three sectors (Laurent et Paquet 1998).

A modification of the geo-governance process necessitates some rearrangement of the role of each sector (and therefore entails a shift of the boundaries among A, B and C) and a new division of labour within the three sectors.

But there is not necessarily a hierarchy among those sectors. Indeed, the great weakness of most of the recent analyses of geo-governance (Luttwak, Luke, Huntington) is that each of these schemes feels that it

must ascribe to one of the sectors the dominant role in defining the fault-lines, and in imposing hegemonic constraints on the other sectors. These positions are misleading ideological stands. In reality, the relationships among sectors are *heterarchical*: it is a world with no pecking order. Heterarchy introduces "*strange loops*" of authority "under conditions of time and place" very much like the game of paper, rock, and scissors where paper covers rock, rock crushes scissors, and scissors cut paper (Ogilvy 1986-87). *Any sector may at times have a dominium over the others: indeed, the three sectors coevolve.*

The ecological concept of *coevolution* provides an apt means of synthesizing the links among these three universes. Coevolution in biology refers to an evolutionary process based on reciprocal responses of closely interacting species. For instance, the beaks of hummingbirds coevolve with the shape of the flowers they feed on. The concept can be generalized to encompass feedback processes among interacting systems (social, economic, political) going through reciprocal processes of change. The process of coevolution becomes a form of *organizational learning*: that is, of joint learning and interadjustment of economy, society, and state.

The central characteristics of this jointly evolving process are *resilience* (the capacity of the economy-polity-society nexus to spring back undamaged from pressure or shock through some slight (regional, sectoral, sectional) rearrangements that do not modify the nature of the overall system), and *learning* (the capacity to improve present performance as a result of experience, through a redefinition of the organization's objectives, and a modification of behaviour and structures as a result of new circumstances) (Paquet 1999a,b).

These *governing relations* are in creative tension (resilience calls for preservation, while learning means change) and must be balanced. This does not call for a rigid division of labour among the spheres, but rather, for a capacity to switch to a greater or lesser dependence on one family of integrative mechanisms or another as circumstances change.

The governance system has evolved considerably over the past few decades as a result of shocks emanating from both the internal milieu and the external context and of the rounds of adaptation they triggered. The ultimate result of these changes is a composite governance system, built

on unreliable control mechanisms in pursuit of ill-defined goals, in a universe that is chronically in a state of flux.

2. Canada and the Six Americas

Canada is nested in a broad ensemble that is usually partitioned into three portions (North America, Central America and the Caribbean, and South America). But this is an ensemble of some forty countries which can be partitioned more usefully from our point of view into six families:

1. North America:	Canada, United States of America, Mexico;
2. The Caribbean:	Jamaica, Trinidad and Tobago, Barbados, Dominican Republic, Haiti, Guyana, Suriname, French Guyana, Antigua and Barbuda, the Bahamas, Belize, Dominica, Grenada, Montserrat, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines;
3. Central America:	El Salvador, Guatemala, Honduras, Costa Rica, Panama, Nicaragua;
4. Andean community:	Venezuela, Colombia, Ecuador, Peru, Bolivia, Chile;
5. Mercosur:	Brazil, Argentina, Paraguay, Uruguay; and
6. Cuba	

These countries have evolved a variety of integrative arrangements over the past forty years: the Canada-US Free Trade Area (FTA), the North American Free Trade Area (NAFTA), the Latin American Free Trade Association which became the Latin American Integration Association (LAFTA/LAIA), the Central American Common Market (CACM), the Caribbean Common Market (CARICOM), the Andean Community, the Common Market of the Southern Cone (Mercosur). All of these arrangements have generated some "regional" integration of the Americas, but these arrangements have all been sub-hemispheric, and many small countries have been left out of these diverse schemes.

Thirty-four of these countries (including Canada) are members of the Organization of American States (OAS). The melodramatic history

A Snapshot of the Southern Portion of the Americas

of the OAS has registered the different phases of optimism and pessimism, ebullience and suspicion that marked the evolution of the web of cooperation within the Americas. Another important forum for Canada is the Association of Caribbean States (ACS), a group of twenty-five countries around the Caribbean Sea (including Cuba), founded in 1994 and designed to "develop the potential of the Caribbean Sea through interaction with Members States and third parties". Canada has Observer status in the ACS.

In the last decade, Canada and the USA have "rediscovered" the Americas, and there have been sustained American and Canadian strategies to engage with the Americas. The 1990 Bush's Enterprise for the Americas Initiative has given a great deal of importance to the idea of a free trade area for the Americas. Canada has actively pursued its strategy through summit meetings (Miami 1994, Santiago 1998) and negotiated treaties or agreements of all sorts. But this interest in the rest of the hemisphere has not translated into a significant increase in Canadian trade and investment in the Americas outside of the Northern cone (Daudelin and Dosman 1998).

A. Trade between Canada and Latin America/The Caribbean (LAC)

Over the past decade, Canada's trade with LAC has remained a bit under 2% of its total trade, but the relative importance of the stock of Canadian direct investment abroad vested in LAC has doubled over the last decade: from 8.3% in 1989 to 17.2% in 1998 (see Table 1). This is a harbinger of foreign trade to come, since foreign trade usually follows foreign investment. But it is important to note that two-thirds of this direct investment is in Bermuda and the Caribbean and that the pace at which Canada appears to invest in Latin America is relatively slow when compared to the pace of the European invasion.

Almost half of Canada's total merchandise trade with LAC is with Mercosur (43%) if one includes Chile—an associate member of Mercosur—and over one quarter (28%) is with the countries of the Andean Community, while trade with the Caribbean accounts for just under one-fifth (18%) of total merchandise trade. Trade with Central America (CACM countries) makes up only 7% of total trade between Canada and LAC.

In LAC, Canada's top exports are to Brazil (well over US $1 billion), with Venezuela and Cuba well below this level (approximately 40% of the level of exports to Brazil), and Colombia, Chile and Argentina roughly at 30% of the level of exports to Brazil. Canada imports primarily from Brazil (again well over US $1 billion), followed by Venezuela (at some 60% of that level), and Chile, Colombia, Argentina and Jamaica (in the 20-25% range of the Brazilian level).

Canada's export structure is fairly distinct from that of LAC, with manufactured goods comprising almost two-thirds (63%) of the country's exports (machinery and transportation equipment are the predominant goods manufactured, accounting for 40% of the country's total exports). Following manufactured goods, fuels, agricultural materials, and food items make up 10%, 8%, and 8% of Canada's exports, respectively. Overall, Canada is much more active in exporting manufactured goods than LAC, although the Dominican Republic, Jamaica, and Brazil also export a large percentage of manufactured goods (77%, 69%, 54%, respectively). It is noteworthy, however, that, of these three countries, only Brazil exports a substantial amount of machinery and transportation equipment (20% of Brazil's total exports fall into this category).

In contrast to Canada's focus on manufactured goods, the LAC countries show a greater reliance on food items, with, for example 90% of Cuba's exports in this category, and food items accounting for over half of the exports in the CACM and most Mercosur countries (excluding Brazil). Fuels and ores/metals are also significant export items for some countries, particularly Venezuela, which derives over eighty per cent (82%) of its export revenues from fuel, and Chile, for whom almost half (46%) of its export income can be attributed to ores and metals.

B. Foreign Direct Investment in LAC

Data on FDI to LAC from Canada is limited. Some fragmented data from the late 1980s and early 1990s assembled by Sáez (1997) shows that Canada's FDI stock in South America was primarily in Brazil ($2.3 trillion US), although Canadian FDI stocks in Argentina, Venezuela, Colombia, Bolivia, and Peru were substantial ($220 billion, $85 billion, $72 billion, $66 billion, and $51 billion, respectively). In the 1990-2 period, the Canadian FDI in Chile was no less than $552 millions (US)

according to the data set compiled by Saez. This presaged an extraordinary increase in the Canadian FDI stock in Chile in the 1990s.

The following table (Table 1) provides a more recent snapshot of the stock of Canadian direct investment abroad (in Canadian $) at different dates over the last decade. It reveals the relatively limited importance of the rest of the hemisphere (except for the US) for Canada's capital export. However, it shows that there has been a decided shift over the last decade.

While the absolute value of the stock of CDIA has almost trebled from 1989 to1998, the percentage distribution of Canadian direct foreign investment in other continents has remained rather stable. But there has been a shift within the Americas: the percentage going to North America has declined by some ten percentage points (63.2% to 53.5%) and the percentage going to Latin America and the Caribbean has increased also by ten percentage points (8.3% to 17.2%).

Even though this is the most complete data set we have been able to compile on Canadian FDI stock in LAC countries, it should be clear that it is not as exhaustive as one would like. The Saez (1997) data set, taken from research done by the Economic Commission for Latin America and the Caribbean (CEPAL), would appear to be more exhaustive than the one we were able to compile from Statistics Canada sources. However, there is no reason to believe that the trends shown in Table 1 are not reliable.

But when one is reminded that in 1997 Brazil attracted one-third of the foreign capital inflows to LAC from the rest of the world, and that it amounted to some US $20 billion, but also that Argentina, Columbia, Chile and Venezuela received over US $5 billion in FDI in that year alone, one is forced to realize that the Canadian investment in LAC has not grown nearly as rapidly as the foreign investment flows from other portions of the world into LAC (World Bank 1999).

3. Hemispheric Dynamics: *intégration par morceau et lentement*

The central economic pillar of the Americas is obviously the United States, which serves as a magnet for all the countries of the hemisphere. The main interest of all countries in the hemisphere in some liberalization of the trade and capital movements in the Americas is in getting

access to the rich US market. Yet very much as in the Canadian mouse and the US elephant story, each country in the hemisphere has a "fatal attraction" toward greater integration with the US, but also some concerns about what it might mean in terms of loss of sovereignty.

This is all the more important because, first, the US trade policy is a mix of multilateralism, preferential bilateralism, preferential regionalism, and unilateral action when it suits its purposes (Weintraub 1993); and secondly, even though the LAC countries shifted from defensive to positive nationalism during the 1980s, a certain degree of protectionism and insistence on managed trade remains, largely as a result of the old experience of subregional integration which was rooted in protection against imports from non-member countries.

Simple tariff reductions are the least of what is involved in hemispheric integration. As Sidney Weintraub suggests, hemispheric free trade will amount to nothing less than "a redefinition of sovereignty" (Weintraub 1993:19). It will redefine the "philosophical framework" within which the countries of the Americas have been accustomed to operate. Free trade negotiations in the Americas are bound to lead to a redefinition of how nationals deal with each other both in their country and across borders, and this is bound to transform the institutional order.

Canadians have gone through this rather painful process of redefinition vis-à-vis the United States, and it is often said that, after more than one decade of experience within the free trade area, this process of redefinition remains incomplete.

A. The Necessary Sequence of Integration

The scope of instantaneous integration is rather limited anywhere in the world, except where security concerns predominate, such as in Korea or the Balkans. Elsewhere, economic integration is bound to evolve slowly, as it has done in the last fifty years wherever it materialized. The North American experience took twenty years from the Auto Pact to the Free Trade Agreement of 1988; there has been a fifty-year span between the European Payments Union in 1950 (through the Treaty of Rome in 1957 and the Maastricht Treaty in 1993) and the European and Monetary Union by the year 2000. In the same manner, one would expect that hemispheric integration will proceed rather slowly.

Table 1: The Stock of Canadian Direct Investment Abroad (CDIA) ($Cdn mil)

	1989	% of Total CDIA	1992	% of Total CDIA	1995	% of Total CDIA	1998	% of Total CDIA
North America								
United States	56,578	63.0	64,502	57.8	87,596	53.3	126,005	52.6
Mexico	237	0.3	451	0.4	948	0.6	2,246	0.9
Total North America	56,815	63.2	64,953	58.2	88,544	53.9	128,251	53.5
Latin America and the Caribbean								
Caribbean								
Bahamas	1,820	2.0	2,149	1.9	2,313	1.4	6,098	2.5
Barbados	1,144	1.3	4,115	3.7	5,736	3.5	14,328	6.0
Bermuda	1,495	1.7	2,619	2.3	3,006	1.8	4,690	2.0
Nertherlands Antilles	82	0.1	36	0.0	657	0.4	134	0.1
Other Caribbean*	722	0.8	790	0.7	1,511	0.9	2,416	1.0
Total Caribbean	5,263	5.9	9,709	8.7	13,223	8.1	27,666	11.5
Central and South America								
Argentina	115	0.1	225	0.2	1,335	0.8	2,239	0.9
Brazil	1,679	1.9	1,880	1.7	2,458	1.5	2,827	1.2
Chile	211	0.2	482	0.4	2,673	1.6	4,221	1.8
Columbia	25	0.0	32	0.0	272	0.2	796	0.3
Panama	19	0.0	18	0.0	101	0.1	160	0.1
Venezuala	56	0.1	168	0.2	355	0.2	401	0.2
Other Central and South America**	121	0.1	288	0.3	661	0.4	2,859	1.2
Total Central and South America	2,226	2.5	3,093	2.8	7,855	4.8	13,503	5.6
Total Latin America & Caribbean	7,489	8.3	12,802	11.5	21,078	12.8	41,169	17.2
Total Europe	18,626	20.7	22,874	20.5	37,206	22.7	49,611	20.7
Total Africa	233	0.3	301	0.3	632	0.4	1,541	0.6
Total Asia and Oceania	6,689	7.4	10,760	9.6	16,744	10.2	19,181	8.0
Total CDIA	89,851	100.0	111,691	100.0	164,205	100.0	239,754	100.0

*Antigua and Barbuda, Cayman Islands, Dominica, Grenada, Jamaica, British Virgin Islands, St. Lucia, Trinidad and Tobago, Cuba, Dominican Republic, French West Indies, Haiti, and Guadeloupe.

**Belize, Guyana, Bolivia, Costa Rica, Ecuador, El Salvador, French Guiana, Guatemala, Honduras, Nicaragua, Peru, Suriname, and Uruguay.

Source: Statistics Canada.

This foot-dragging is due not only to the reluctance or unreadiness to proceed by countries in all parts of the hemispheric economic space, but also to the unwillingness of the have-portion of the hemisphere to share with the have-not portion to the extent that has been the case in Europe. In Europe, the important social disparities among regions have been addressed through social transfers in the manner it is done within the Canadian federation. These transfers constituted a way to catalyse the process through which the economic infrastructure of the poorer countries could be refurbished, and eased the way to integration. But this sort of arrangement is unlikely to evolve in the Americas where the tradition of equal and sovereign trading partners, responsible for the management of their own socio-political affairs, is so deeply rooted.

But it should not be presumed that the reluctance to proceed is due to an across-the-board lack of readiness everywhere in the hemisphere. Huffbauer and Schott (1994) have examined the readiness indicators of the major countries of the hemisphere (price stability, budget discipline, external debt, currency stability, market-oriented policies, reliance of trade taxes, and functioning democracy). Overall, the NAFTA region received very high scores (around 4.4 out of 5 on average) except for budget discipline, and we know that this has been remedied since 1994. Mexico obviously scored much lower (3.9) than Canada and the USA. Chile also scored very high (4.4)–closer to the NAFTA countries than to other Latin American countries.

The Mercosur countries received a score of 3.1 on average, with the smaller countries (Paraguay and Uruguay) scoring a full point or more at 3.7 than the larger countries (Argentina and Brazil). In this portion of the hemisphere, problems with price stability, external debt, and reliance on trade taxes remain important. The Andean Community has experienced important market-oriented reforms over the past decade, and therefore would appear to fare not too badly except for price stability and external debt, but the serious problems of drug trafficking and guerrilla violence are generating significant instability. Central America is somewhat splintered: El Salvador and Costa Rica can be rated in the mid 3 category, Honduras and Guatemala a full point below, and Nicaragua yet another full point below. As for the Caribbean, at least the larger countries within the Caribbean, they appear to be relatively well positioned,

but the smaller countries are obviously actively slowing down the pace of an integration they fear.

This brief survey reveals a great variety among these different portions of the Americas in terms of readiness for the integration of the hemisphere. In the absence of what can be regarded as a most unlikely equalization payment scheme, it would seem that the the big bang model is most unlikely to be workable. This is the basic reason why an *intégration par morceau* and very slowly is the most plausible scenario. One of the advantages of this approach is that regional initiatives are more likely to progress faster than broader schemes, and that this approach, complemented by sector-by-sector regime negotiations, may indeed provide an easier way to ensure progress without the risks of blockage generated by the all-or-nothing approach.

B. Piecemeal Integration, Multistability and Dispersion of Authority

Some have claimed that the multiplication of such regional/sectoral groupings has resulted in a loss of allocative efficiency as a consequence of the impediments to trade and investment flows that have been erected for countries outside the different groups. However, a compensating factor is that there has been an increase in the *multistability* of the overall system as a result of the partitioning of the world system in a multiplicity of these semi-disconnected zones.

A multistable system is one in which a greater ability to adapt is ensured through a certain disconnect among subsystems. An adjustment called for by a shift in some essential variables is delegated, so to speak, to a partial system enabling the overall process to adjust more smoothly to important shocks in the environment in a manner that would have been either impossible or very time-consuming had the overall process been forced to adjust *in toto* (Ashby 1960; Paquet 1978). More multistability considerably reduces the probability of the whole system crashing as the result of a systemic crisis. A comparison of the impact of the 1930s crash, and its propagation throughout the world, with the impact of the Japanese crash of the early 1990s, shows that the latter was much more contained and was resolved faster because of the higher degree of multistability in the world economy today (Emmott 1999:17).

The regional zone/regime strategy amounts to a limitation of the market place's dominium over the world economy through governance mechanisms imposing restraints on flows of commerce and capital across borders, *and* the ensuring of some collaborative action on the part of clutches of countries vis-à-vis the rest of the world.

Canada has joined one such regional grouping in North America over the last decade, and this has generated an increase in the concentration of Canada's trade with the US. This increased Canada-US trade has undoubtedly had a dampening effect on the pains of labour market restructuring that were triggered by shocks elsewhere in the world system. But it has not increased (and might even have decreased) Canada's geopolitical power over its own future, since Canada and Mexico have remained very much "satellite economies" vis-à-vis the United States in a hub-and-spoke type arrangement.

One way for Canada to gain more influence over its own future is to ensure the construction of a broader regional economic zone containing all of the Americas. In such a club, Canada might be able to develop alliances with other significant middle-range economies of the Americas to ensure that the "regional zone" does not serve only the interest of the dominant economies (the United States in the North, and Brazil in the South), but also serves those of other significant partners. According to Daudelin and Dosman (1998), this is the only way (if indirect) in which Canada can increase its geopolitical importance on the world stage.

This "hemispheric governance strategy" was articulated in Canada in 1989. Canada joined the Organization of American States and has participated in many summits where this strategy has been slowly unfolding. By 2005, it is expected that the group of thirty-four countries of the Americas will become members of a free trade area. However, Canada may not have been promoting this strategy in the right way.

A sensitive and effective promotion of hemispheric governance does not simply mean an extension of the North American free trade agreement to the rest of the Americas. This approach is unlikely to succeed as the larger economies in the South, notably Brazil, are less willing than Canada and Mexico to become a spoke to the US's hub. Rather, what is likely to generate a consensus is a proliferation of ad hoc functional arrangements, negotiated in a variety of arenas, as a "disaggregating

response of sovereign states to the complexity of a highly interconnected world" (Falk 1999).

These arrangements would entail a devolution and dispersion of authority, and the participation of private, public and civic sector representatives in rule-making. While it may not square well with the promotion of a single agreement, as the United States wishes for the 2005 process, the progress via this piecemeal approach might serve to test whether middle-power countries like Canada (in alliance with other middle-power countries) might be able to gain some influence within the Americas. Influencing the process itself would be a meaningful test case.

C. The Next Steps: Negotiation by Subregions

One of the important implications of our relative inertia on the hemispheric governance front is that in the meantime the situation evolves: already in 1996, the European Union (EU), building on some traditional economic, trade and cultural links with many South American countries, has signed a trade agreement with Mercosur. And since many South American countries trade more with the EU than with the US, it has been suggested that a free trade agreement with the EU might be more beneficial to Latin America than with the US (Bhalla and Bhalla 1997:156).

If a global approach is premature, and most certainly feared by many Latin American countries (for which US domination in such a scheme is ominous), the only other viable strategy would appear to be the one adopted by the EU: negotiation by subregion. This sort of meso-economic approach, when combined with the development of sectoral regimes at the hemispheric level, might indeed provide a transition to a loosely coupled hemispheric "federation" of more or less free trade areas. While this detour on the road to hemispheric integration may appear to be wasteful (in a static efficiency sense), it is probably necessary, given the political decision of Argentina and Brazil to push Mercosur.

But this detour cannot be improvised. For if any sub-component of any group were to negotiate special arrangements with any other subgroup of countries, much systemic damage could be done. Already Mexico's bilateral agreements with certain countries and groups in Latin

America has damaged the substantial trade (existing and potential) between Canada and these countries (Wonnacott 1996).

So Canada has to develop a strategy to ensure that it is not walled out by a multiplication of regional agreements within the Americas. For Canada, the architecture of the trading system is therefore not inconsequential. Even though a generalized FTA throughout the Americas would obviously be simpler, since it is not plausible at this time, it is crucial for Canada to think through the different stages through which the hemispheric integration will proceed, and to design a proactive strategy to increase the probability of some of the less undesirable scenarios. For once trading and investment patterns have crystallized, it may turn out to be very difficult to negotiate substantial transformations to the trading system.

And yet, as Daudelin and Dosman (1998) suggest, there is no functional necessity to Canada's option for the Americas. Indeed, its very complexity may be an additional reason not to bother. So only a robust policy initiative would appear to be able to generate some effort in this direction. But this policy initiative has to be more sophisticated than the simple suggestion of quick trade liberalization and elimination of capital controls, or the negotiation of an all-country agreement, where the US would be eminently first among equals. Such simplistic approaches are bound to fail, for Latin American countries have more to fear from United States unilateralism than does Canada. A soft, slow, multifaceted, and sophisticated regime-type approach is called for (Paquet 2000).

4. Distributed Governance through Flexible Regimes

Canada, like most other advanced economies, has been subjected to a variety of pressures over the last twenty years as a result of dramatic changes in its environment. These pressures have been mainly ascribable to globalization and accelerated technical change. As a result of these changes, the environment has become more complex and more turbulent, and concerns from the private, public and civic sectors have been forced to acquire a greater capacity to transform, and to develop a philosophy of continuous improvement and innovation in order to

survive. In the face of the "new competition", these concerns have had to become "learning organizations" (Best 1990; Paquet 1999a,d).

A. The Learning Economy

Learning organizations must be capable of redefining new goals and new means *as they proceed* through tapping into knowledge and information that other agents and groups possess, i.e., through cooperation with other stakeholders, and through social learning. This has triggered a drift in the governance process: the governance pattern evolved from more exclusive, hierarchical and paternalistic forms in the 1970s, *toward* more inclusive, horizontal, distributed and participative forms in the 1990s, and from a pattern where the national leader was in charge to what would appear to be a game without a master.

To be effective, the new distributed governance through social learning requires not only a new regime in its interactions with the rest of the world, but also new structures (more modular and network-like), new strategies (based on dynamic efficiency and learning), and new forms of coordination (more decentralized and more dependent on moral contracts and trust) (Paquet 1999f).

These moral contracts, and the alliances they embody, would work in a variety of ways on the hemispheric front: through some constraints on the flows of commerce and investment to somewhat insulate a region or a group from catastrophes elsewhere, through the development of zone or regime institutions to facilitate the adjustment of the group to external shocks, through policy coordination enabling the group to define more effective ways either to prevent the shock or at least to attenuate the impact, through compensatory mechanisms put in place to ensure that those most seriously hit by these shocks are somewhat compensated through some sort of redistribution scheme, and through collaborative mechanisms capable of providing adequate forums for consultation and co-decision (Preston and Windsor 1992). The important cooperative work done by the Cairns group of medium-sized agricultural exporters provides a valuable lesson. Canada, Australia, New Zealand, and some Latin American and South East Asian exporting countries were able to form a reasonably cohesive group that was able to

have a strong voice at the multinational trade negotiations table (Christie 1993).

Although some have come to believe that the only alternative to the hub-and-spoke model is a "mishmash of overlapping agreements" (R.G.Lipsey in Lipsey and Meller 1997:254) that can only lead to chaos, this is not the case.

The required speed, flexibility and innovative adaptation necessary in the new globalized socio-economy can only be generated by non-centralization and sectional networking. Hierarchical structures have proved inadequate. The reason why the guidance system has to be decentralized, collaborative, and adaptative is that this is the best sort of arrangement if one needs to continually adjust to new circumstances in order to generate knowledge value-addition.

This is also the recipe for productivity gains in a world of alliances and partnerships across borders, and among different layers of networks. Hierarchies have limited learning abilities, and markets have limited capacities to process information effectively. Network alliances are a way to counter these failures: they reduce uncertainty and adaptation costs arising from the environments' complexity through an increase of the partners' collective organizational capabilities (Paquet 1999a,c).

B. The Catalytic State

These collaborative arrangements through networks foster faster and more effective learning, but the development of such arrangements calls on the state to recognize that it cannot achieve its goals by simply relying on its resources and coercive power. The state must assume a dominant role in coalition-building, both internationally and domestically. This is what Michael Lind (1992) has called "the catalytic state".

The proliferation of regional/fonctional regime agreements and the evolving character of close government-business-society relations in Japan, Germany, etc. are manifestations of the new importance of the catalytic state (Weiss 1998:210). Not all states have the same catalytic capabilities, however. Some like the US have the clout necessary to exploit international leverages; others like Germany and Japan have both domestic and international clout in coalition building; still others, like Canada, would appear to lack both capacities.

It may well be that the sort of consensus required among private, public, and civic partners for such networks to be effective is not possible for large fractured countries like Canada; that the only way to generate catalytic action is at the level of region-states, through the empowerment of sub-national units (Courchene and Telmer 1998). This is a pattern that has developed in the European Union, where sub-national segments of country A may enter into agreements or treaties with sub-national segments of country B, without asking permission from higher order governments. Perhaps in Canada such decentralization-cum- distributed-governance is the only way to ensure that the socio-economy *in toto* can evolve faster toward a less ineffective governance.

Despite the fact that an extensive literature has shown that, both internationally and nationally, the new distributed governance system is most effective in coping with globalization and productivity slowdown (Naisbitt 1994; v.N Whitman 1999; Leadbeater 1999), the degree of cognitive dissonance remains high in Canada. The cumulative effect of a certain degree of glibness, blindness, and denial, and a pervasive centralized mindset that prevents the engineering of the requisite degree of decentralization, has meant accepting many broad world trends somewhat fatalistically, but has also fed an attitude suggesting that we need not worry about the required governance overhaul (Paquet 1999c,d,f).

Consequently Canada is not taking action domestically to capitalize on its own potentially greater valence in the free trade scheme of the Americas. The Canadian knowledge and competence base about Latin America is limited, and the "winning conditions" for greater penetration of LAC markets have not been analysed extensively enough. Indeed, hemispherically distributed governance is neither promoted nor even discussed openly, so Canada is currently unlikely to be in a position to take full advantage of this new distributed governance scheme when it materializes.

Yet the integration of the Americas *par morceau* (around Brazil in Latin America as it has proceeded around the US in North America) is promising in the long run. As the United States' valence in the world economy diminishes with the strengthening of other regional groupings such as the European Union, and as Latin American countries become

much more sizable economic powers than Canada in the next decades, Brazil, Argentina, and other LAC countries are likely to remain throughout this slow process of integration the natural allies of Canada against the forces of the United States, which tend to foster protectionism and unilateralism (Lipsey and Meller 1997).

C. A New Philosophy of Public Intervention

At the core of the new regime, what is needed first and foremost is a philosophy of public intervention. It is emerging as a two-stage process: first, a growing recognition that there is a need for a new rationale for the collective institutions; second, the development of the design principles that are likely to underpin the social architecture of this new strategic and distributed governance regime based on social learning (Paquet 1999a: Part III).

(1) This calls not for the least constraining public philosophy, but for one that would be the choice of citizens if they had "the fullest attainable understanding of the experience resulting from that choice and its most relevant alternatives" à la Dahl (Dahl 1989). The challenge is to bring about that sort of "fullest understanding" in the population. It means that government can no longer operate in a top-down mode, but has a duty to institute a continuing dialogue with the citizenry. This requires a language of common citizenship, deeply rooted in civil society: the citizens have commitment and values that the state must take into account, and they want an active role in the making of policies supposedly generated to respond to their presumed needs. Only through a rich forum and institutions that enhance citizens' communication competence is an *enlightened understanding* likely to prevail—both as a result of, and as the basis for, a reasonable armistice between the state and the citizenry.

The state, in the past, has played housekeeping roles and offsetting functions. These functions required minimal input from the citizenry. The state in complex advanced capitalist socio-economies must now play new central roles that go much beyond these mechanical interventions. It must become involved as a *broker*, as an *animateur* and as a *partner* in participatory planning, if the requisite amount of *organizational learning*, co-evolution and cooperation with economy and society is to materialize. This paves the way for a *participation-society* (where

freedom and efficacy come from the fact that the individual has a recognized voice in the forum on matters of substance and procedures in the public realm, and more importantly an *obligation to participate* in the definition of such matters). The citizen refuses to be confined to living in a rights-society where the dignity of individuals resides exclusively in the fact that they have claims. The citizen becomes a co-producer of governance.

(2) The design principles for a social architecture in keeping with the guiding values mentioned above are clear. First is the principle of *subsidiarity*, according to which "power should devolve to the lowest, most local level at which decisions can reasonably be made, with the function of the larger unit being to support and assist the local body in carrying out its tasks"(Bellah et al 1991:135-136). The rationale for this principle is that the institutions closer to the citizen are those likely to be the closest approximation to organic institutions, i.e., to institutions that are likely to emerge "*undesigned*", to emerge from the sheer pressure of well-articulated needs, and likely to require minimal yearly redesigning. Subsidiarity reduces the vertical hierarchical power and increases in a meaningful way the potential for participation.

The second design principle is that of an *effective citizen-based evaluation feedback* to ensure that the services produced, financed, or regulated by the public realm meet with the required standards of efficiency, economy, and effectiveness, and are consonant with the spirit of the agreed standards or norms. This is a central cybernetic loop feature in the refurbished governance. It is essential if organizational learning is to proceed as quickly as possible.

This entails a transformation of the audit and evaluation functions in the decision-making process. Instead of being limited to untimely *ex post* efforts at identifying abuses, these functions must become part of the *ex ante* strategic decision-making in a citizen-centered governance regime. Perfunctory consultation will not do: it requires the creation of "chaordic organizations".[1]

5. A Realistic Canadian Strategy

There are many scenarios envisaged about the nature of the new institutional order and about the ways in which the transition toward it will

materialize. The United States favours either a hemisphere-wide agreement *or* a US-centered hub-and-spoke series of bilateral or multilateral free trade agreements. Neither of these scenarios appears plausible or realistic at this time. This is due to the deep fear of US dominance and the concern about loss of sovereignty. A more likely scenario is the integration *par morceau et lentement* of a set of of subregional free trade agreements into a loose federal-type system more or less governed by reconstituted existing OAS agencies, in coordination with the Inter-American Development Bank and other inter-American bodies or sub-hemispheric regional associations. This scenario may appear unwieldy, but is more likely to materialize than the other two (Atkins 1993).

It is not sufficient, however, to suggest that distributed governance and flexible regimes are the way out of the present predicament. These general concepts provide no true guidance: they are like 16th century maps, elegant but not helpful to navigation.

What is required is a translation of this general scenario into a strategy indicating the way in which Canada might best operate to make the highest and best use of the opportunities offered by the emerging hemispheric integration. Such an action plan must be based on reasonable assumptions about the environment and on a good appreciation of the

---

1. D.W. Hock (1995) uses the word "chaord" (from chaos and order) to refer to "a self-organizing, adaptive, non-linear, complex system, whether physical, biological or social, the behavior of which exhibits characteristics of both order and chaos or, loosely translated to business terminology, cooperation and competition" (p.6); as founder of VISA, he has created a company that is "an inside-out holding company" in which the 23,000 financial institutions that create its products are "at one and the same time, its owners, its members, its customers, is subjects and its superiors" (p.14); this sort of organization not only embodies subsidiarity as a founding principle ("no function should be performed by any part of the whole that could reasonably be done by any more peripheral part, and no power vested in any part that might reasonable be exercised by a lesser part" (p.13)) but also the principle that the chaordic organization is owned by its members, that it must embrace diversity and change, but that no individual or institution, and no combination of either or both should be able to dominate the deliberations; in order to ensure that this is the case, VISA has had to ensure continuous learning through continued feeedback loops.

dynamics within the world economy and within the hemisphere. It must also take realistically into account the strategies of the other partners.

A. Some Perspectives

(1) It must be stated clearly from the start that there is no consensus on the priority to be given to hemispheric integration. Some Canadians (like many Americans) consider that not only are there slim pickings to be expected from the extension of the free trade area from North to Central and South America–given the very limited trade links between these three portions of the Americas– but that it might even be counterproductive since it might well undermine the construction of a global trade regime by making other mega-regions react defensively to this initiative (Bhagwati 1997; Gordon 1998). On the other hand, a number of observers are more optimistic. They do not minimize the difficulties for Canada in taking advantage of these new markets, but suggest that it would be a matter of appropriately supported entrepreneurship (Berry, Waverman, Weston 1992; Purvis 1999). Those more optimistic observers insist on the fact that in a multilateral initiative of this sort small countries gain most, and that Canada has therefore much to gain.

If there is no consensus on hemispheric integration per se, neither is there any, even among those favouring integration, about the form of and the route to this integration, or about the "deep" or "shallow" integration outcome of these processes (Ostry 1997)

The United States favours a global agreement arrived at through a fast track. This strategy has been derailed by the refusal of Congress to grant President Clinton the authority for fast-track negotiation, but the global integrative accord remains the preferred way for the US.

Others see hemispheric integration following the path of the European integration: this would mean a process in three stages or generations–first, trade liberalization plus cooperation; second, limited preferential trade, plus deeper cooperation and harmonization; third, community-level trade liberalization, plus normative supranationalism. This plan for a progressive construction of trade arrangements, mechanisms for coordinated decision-making, commitment for cooperation, and adherence to some fundamental principles has been sketched by Frank Garcia in what he calls "Americas Agreements"—a

blueprint for an interim stage in building an integrated hemisphere (Garcia 1997). This process might take ten to fifteen years to become operational.

Others still see the process of integration proceeding on the basis of the regional blocs already in place: building on inter-bloc regimes, on a piecemeal basis, as the most promising path. This sequential program is based on a realistic assessment of the different degrees of readiness of the different portions of LAC. This has already been proposed as a second-best strategy, when it became clear that the single global hemispheric order sought through the fast track might not materialize.

Finally, others suggest that even this integration *par gros morceaux* is unduly optimistic: they put forward the possibility that the only viable strategy is a strategy of *petits pas* via the proliferation of bilateral arrangements within the Americas, probably through the travails of the Latin American Integration Association (ALADI) with some key countries like Mexico and Brazil playing a crucial role as southern hubs (Axline 1997).

In the absence of fast-track negotiating authority by the United States, and given the "managed trade" approach favoured by Brazil, it is unlikely that the US global neo-liberal scheme will prevail or even that the ordered process of "Americas Agreements" will materialize. It is much more likely that the latter two scenarios will ordain the integration of the Americas, and that what can reasonably be expected over the next decade is much more a form of "shallow" integration of the Americas than a "deep" one.

(2) In order for Canada to develop the will for an action plan in the face of such fuzzy and unpromising circumstances especially when the political actors have such a fixation on short-term results, the Canadian citizenry needs to recognize in a stark way that the Canadian socio-economy is falling behind its competitors in a significant manner. The stagnation of the productivity growth is troublesome, and so is the failure of Canada's service sector to generate adequate exports. This is an indirect indictment of our health and education sectors that are such important components of our service sector and are badly in need of repairs (Paquet 1998).

The rapid progress of the digital economy is also making most of the traditional protective techniques rather ineffective, and calling for ever more flexibility, openness and decentralization. This should act as an additional force driving the Canadian government to spearhead initiatives to educate the citizenry and in so doing help quash what Bob Rae has cleverly labeled "the comfortable immaturity of permanent opposition" (*Time*, June 28, 1999). For hemispheric integration is not so much about tariffs as about a transformation of structures and attitudes.

Whether Canadians are driven to press their governments to action as a result of fear for their standard of living, or whether governments will be pressed by the Canadian "entrepreneurs, executives and government trade mavens" (Purvis 1999) into taking advantage of this new frontier is not relevant. Both forces already are at work.

(3) What is less clear is how the Canadian catalytic state should develop its strategy. This process of necessity involves the Organization of American States (OAS) and other associations of the sort to serve as deliberative forums through which governments, business communities, and civil societies might be able to shape different regional consensuses. Such consensuses are unlikely to be constructed except on a piecemeal basis through some regime-building in different areas until the time is ripe for more universal rules. But this will require creative leadership on the part of the Canadian government in order to ensure that both the Canadian business and non-governmental communities are mobilized, and the requisite resources for capacity-building in Canada are found.

With the requisite mobilization and capacity building, one can expect the Canadian government to be able to take on a leadership role in the development of an organized system of cooperation with Brazil, Argentina, Venezuela, Peru, Chile, etc. But it will require that trust be recognized as a central capability, and that such capability can lend itself to design only up to a point (Paquet 1999e). Building cooperative relations will require much imagination, especially when it involves countries like Brazil and Argentina that might be seen as competing with Canada in a number of key areas, but this also provides opportunities for joint ventures, alliances, strategies. This is a major reason for pursuing such objectives in the longer run, while focusing maybe in the shorter run on the Caribbean Sea as a region of choice where Canada has already

deep roots that are likely to help immensely in the construction of alliances built on trust.

B. A Long-Range Strategy

It is important to explain to the Canadian citizenry that for a middle-power country like Canada being part of the hemispheric zone is *an insurance* against the uncertainties of the new global order, but also *a way to gain some leverage* in dealing with the US through the possibility of selective alliances with other middle-power countries like Mexico and Brazil. This is a matter that needs to be explored more fully, but it should be clear that in this game, Canada starts as a dominant player in the hemisphere—not as powerful as the United States obviously, but regarded often as "Big Guy No. 2" (Purvis 1999).

Second, one cannot explore these possibilities without a much better understanding and a much more realistic assessment of Canada's circumstances within the world economy. *An occasion* for such a re-evaluation might be serious parliamentary hearings on the Free Trade Area of the Americas or other meaningful hemispheric strategy. These might provide opportunities to gauge the nature of the risks and uncertainties Canada is likely to face, and the nature of the sort of insurance and new capacities it may need. For one of the extraordinary impediments to the development of hemispheric integration is the abysmal ignorance about Latin America in Canada. One might have expected that the migration flows from Latin America to Canada in the last decades would have helped bridge the chasm. It may have been the case in Quebec to a certain extent, but most certainly this has not been the case for Canada in general.

Third, there is an urgent need to recognize *the limits imposed by the faultlines* underlined by Luke, Luttwack and Huntington in designing new coordinating forums and institutions. Cultural, security and economic divides must be taken into account. There is much naïveté in the neo-liberal shotgun approach adopted by Canada when it showers a multitude of trade missions over the different continents without paying much attention to these factors. The determination to seek multilateral liberalization and to pursue single-mindedly the elimination of trade and investment barriers without sufficient attention to the non-economic

costs of such initiatives (the MAI initiative is a good example) often reveals a less than adequate appreciation of the cultural and civilizational faultlines. On the other hand, it is also the same lack of appreciation of cultural factors that leads Canada to imitate the US trade activism and its methods when very different foci and very different methods might be much more potent.

Fourth, Canada's relative importance is declining in the world economy, even though Canadians find it difficult to accept. This translates into the unlikelihood that Canada's preferences will carry much weight in a confrontational mode, and is forcing Canada into *a mode of oblique action and soft diplomacy*. Such an approach is illustrated by Canada's insistence on the involvement of civil society in the Americas. But this in turn requires that the Canadian population be much better informed about the nature of these international initiatives, and that Canadian business and Canadian civil society be made aware of the role they must play in order for the outcome of the hemispheric governance model to be most profitable for Canada (economically, politically and socially). A number of negotiating groups are already at work, and a committee on the participation of civil society (a Canadian initiative) is in operation.

Nothing can better illustrate the power of soft diplomacy than the First Spouses Summit in the Fall of 1999. Canada chose to be a continental "master of ceremonies" and in so doing has had much to do with the definition of an agenda that even the US had to adjust to (*Time* 1999). Canada will shape many such meetings in the next while, with perhaps the crowning gala being the Summit of the Americas in Quebec City in 2001.

C. Building Governance Capabilities

Such a re-evaluation of the potentialities of hemispheric integration entails more than an academic exercise. It requires the mobilization of the interest and imagination of Canadian groups required to bring it about but also some blueprint for the governance and management-capacity building that needs to be put in place if the hemispheric integration movement is to succeed from a Canadian point of view.

In our new high-risk and turbulent environment (Type 4 in the language of Emery and Trist 1965) strategic management is no longer

sufficient: what is required is the development of capacities for collaborative action in managing large scale re-organizations and structural changes at the macro level (Metcalfe 1998). In environments of type 1, 2 or 3 (corresponding crudely to the world of perfect competition, imperfect competition, and oligopolies respectively), operational, tactical and strategic management suffice. In turbulent type-4 environments, the ground is in motion; acting independently not only may not ensure effectiveness, it may make things worse and amplify disintegrative tendencies. What is required is collective action by "dissimilar organizations whose fates are, basically, positively correlated". This requires in particular trust-enhancing mechanisms.

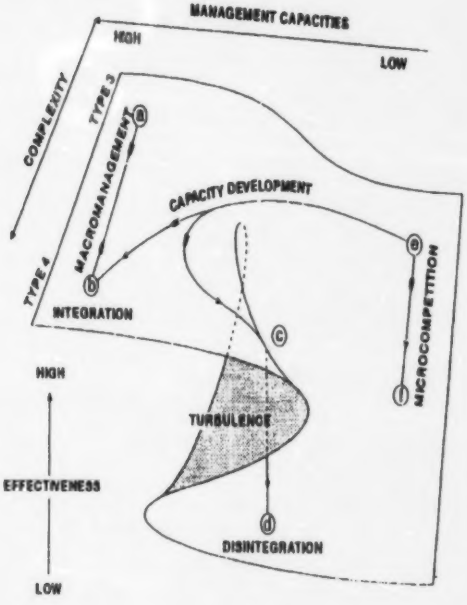
Metcalfe has synthesized this sort of predicament in a catastrophe-theory type graph (below) depicting the major aspects of the issue in three dimensions: the degree of complexity of the environment, the degree of management/governance capacities, and the degree of governance effectiveness. He shows that as complexity increases, management capacities must improve to avoid disintegration. If these capacities already exist, they must be brought into use (a-b); if they do not exist, they must be developed (e-b). If they do not exist and no development effort is made (e-f), or if the capacity building is inadequate (e-c-d), disintegration ensues. Type 4 environment requires innovations which strengthen the capacity for collaborative relationships (Metcalfe 1998: 29-30).

This framework shows how the dual task of group mobilization and building management and governance capabilities are integrally related since the driving force behind the new governance effectiveness is collaboration. It puts the emphasis on the need for creative politics, for innovative institutions. In particular, it underlines the challenges generated by the "new complexity" of the cognitive division of labour which calls for new forms of collaboration, not only at the level of trade and exchange, but at the very core of the production process (Moati et Mouhoud 1994) and the need for new modes of coordination

There are four broad types of capabilities to be created, distributed and maintained that are particularly relevant to governance: rights and authorities, i.e., capabilities enshrined in formal rules; resources, i.e., the array of assets made available to individuals and institutions like

money, time, information, facilities; competencies and knowledge, i.e., education, training, experience and expertise; organizing capacity, i.e., the capacity to mobilize attention and to make effective use of the first three types of capabilities (March and Olsen 1995).

It might appear somewhat impetuous to say that there is at present a deficit on many of these fronts, but this is what a rapid survey would appear to reveal. The catalytic state cannot be expected to resolve these deficits in isolation, but it is expected to generate an awareness of these gaps and to lead the process through which they will be filled.



Complexity, management capacity and effectiveness
in a catastrophe theory stylization.
Source: L. Metcalfe 1998 (p.28)

For the time being, the most glaring gap is on the competencies and knowledge front: the mutual ignorance on both sides of the Canada-LAC chasm is a major stumbling block for whoever may try to construct new governance capabilities. Yet, the resources allotted to the process of hemispheric governance (in the broadest sense) are not inconsequential. However, since we do not have a fair appreciation of what they are, they are probably extremely badly coordinated.

Indeed, little is known about the network of initiatives sponsored by individuals and private or civic organizations that are linking Canada and the southern part of the hemisphere. Without a complete inventory of these initiatives, and the immense capital of trust that they have accumulated, it is difficult to identify the best opportunities facing Canada and the most important blockages that might be resolved by negotiating new rules or agreements.

Another important gap is the lack of "organizational capital". This is likely to be even more determinant when creative politics is *de rigueur* and much must be done in an informal way. Again the central importance of the trust-building possibilities as a component of organizing capacity needs much attention in the choice of focal points for action (Keen 1999).

D. A Three-Pronged Action Plan

From our analysis to this point, it should be clear that no simple fix will do. The Canadian strategy must be multifaceted and build on a variety of potential pressure points on which it might have an impact. It should proceed simultaneously at three levels.

(1) At the Macro Level

What is required is an effort to define a broad range of interventions designed to promote closer collaboration between Canada and Latin America and the Caribbeans. In a sense, it represents a continuation (but at a renewed and more forceful level) of the effort to promote greater connectivity between the two areas. While this approach is of necessity broad ranging, it may appear to be unfocused. However, there is much that can be done at this level to heighten Canada's capabilities.

For, one should not presume that there has been no effort to "organize" some concerted set of activities. Since 1994, a provisional framework exists on the shelves of the Department of Foreign Affairs and International Trade (DFAIT). It is summarized in Policy Staff Paper 96/04 and proposes an action plan under three main headings: creating sustainable prosperity, promoting good governance, and building bridges (Sheck et al 1994). They all require private/public/civic cooperation, but, as might be expected, the focus of DFAIT is mostly on government's initiatives.

Under the first heading, creating prosperity, one finds an array of activities:

- trade targeting by sector and country rather than an all-encompassing strategy
- special support to constituency building, strategic alliances, joint ventures
- bundling of credits and business development programs in the region
- foreign investment protection agreements with targeted countries
- increase significantly the share of development assistance going to targeted countries in line with progress in political and economic good governance
- create a regular and sustained environmental policy dialogue with key regional players

Under the second heading, good governance, one finds among others the following activities:

- advice on the process of good governance in areas like privatization, regulatory reform, tax collection
- training of Latin American military officers in the art of peacemaking

Under the third heading, building bridges, one finds *inter alia* the following activities suggested:

- a Foundation of the Americas on the model of the Asia Pacific Foundation to develop trade links, cooperation between educational institutions, etc.
- contacts with the Latin American groups in multilateral settings like the UN
- build more proactively on Canada's presence in the OAS with initiatives like the one Canada prompted (Unit for the Promotion of Democracy) and funded
- leadership with respect to internal reforms of the OAS
- promote and market Canadian educational institutions
- promote more public awareness of Latin America in Canada.

This is a list of very modest proposals. There are many others. For instance, an effort to coordinate the efforts of such Canadian agencies as the Export Development Corporation, the Canadian International Development Agency, the International Development Research Council, the Department of Foreign Affairs and International Trade, many of the federal and provincial cognate agencies, and a host of important enterprises and concerns from the private and civic sectors, could make an extraordinary difference over a relatively very short time period.

This framework might be said to have influenced somewhat Canada's policy stand, but the least that one may say is that it remains unfinished business.

(2) At the Meso Level

This second avenue is dictated by two important historical facts: the evidence of the greater effectiveness of the catalytic state at the sub-regional level, and the extraordinary success of the Canadian strategy in the Caribbeans.

While, in the long run, it might be possible to imagine winning strategies of collaboration of Canada with some middle-power countries of LAC (Brazil, Argentina), it must be recognized that, in the short run, each of these potential allies is also part of sub-hemispheric economic zones, and potential partners are even often a hub connected with some hinterland of more or less dependent spoke-type countries. In such a context, Canada may find it difficult to strike really useful bargains with

other middle-power countries of the southern portion of the hemisphere which have their own imperial designs, unless it can bring to the table its own zone of influence.

This leads one to re-examine the very successful strategy of penetration of Canada in the Caribbeans (i.e., in establishing privileged relationships with smaller and closer countries in financial and industrial sectors) and to realize that it might easily be pursued all through Central America since most of these countries (Guatemala, El Salvador, Nicaragua, Costa Rica, Panama, but also Colombia and Venezuela) are countries that have had (and still have) to bear the cross of asymmetric influence from larger countries (be they Mexico, Brazil, etc.) and might welcome, as Bermuda and the Caribbeans proper did in the past, some alliance with a less imperial suitor like Canada.

This would appear to be part of an explicit strategy for Quebec: it has trade offices in Buenos Aires and Mexico, but satellite offices in Costa Rica, Venezuela and Columbia. And it may well be that Quebec's goals of trebling the number of Quebec firms in LAC (from some 500 to 1500) by the year 2005 will turn out to be much more in Central America than in the larger countries of Latin America.

So the strategy of *petits pas* that has paid off in the Caribbeans may hold promises if it is generalized to Central America. Canada could, in this way, build on the network of initiatives that already exists in the area, and probably take advantage also of the emerging Association of Caribbean States as a vehicle to develop its zone of influence in Middle America. Canada is already an Observer in the ACS but it will have to be creative to exert pressure in subtle ways, for France, through its colonies in the Caribbeans, is already an Associate Member of the ACS.

(3) At the Micro Level

But it will not be possible to follow either of the strategies mentioned above without a major investment in *interpersonal resources*, for brokering a greater connectivity with LAC builds much more on interpersonal links and trust than is usually recognized in Canada.

This is bound to entail a major effort to get Canadians in contact with Rotary Clubs and such agencies in LAC, and to learn to make the highest and best use of Canadians who may have developed privileged

relationships with groups of Central and Latin Americans. Already, some of the initiatives of Industry Canada to link up some Aboriginal groups in Canada with aboriginal groups in Central America (where in certain countries they represent a significant portion of the population) would appear to be good demonstration projects.

These personal and cultural links have been cultivated by European countries, and the United States has made enormous efforts to create surrogates for such links through an immense effort to attract a significant portion of the best young persons into their educational institutions. Many of the macro and meso initiatives to build bridges between Canada and the LAC may indeed need to be bolstered by the requisite amount of investment in personal networks and flexible business networks not only as communication tools but also as investment in interpersonal resources capabilities (Foa 1971; Laurent et Paquet 1998: ch.1)

Conclusion

A closer examination of the data available on trade and investment in the hemisphere, but also of the new dynamics at play, and of the recent robust efforts by the European Union to develop formal links with MERCOSUR, Chile and Mexico, might provide a better sense of what might be potentially lost in the long run by not developing a meaningful Canadian hemispheric governance strategy. The costs of inaction in the long run are immense.

But we have also put forward a few hints about what might be a priority agenda for Canada in the shorter run in the dossier of hemispheric governance. While these are not meant to be more than indicative of what might ensue if a moderate amount of commitment could be mustered, they emphasized the real potential of focusing on the whole ensemble of countries around the Caribbean Sea.

A tally of the unconnected initiatives that Canadians have nurtured and developed in the Caribbeans, and more recently in Central America and the rest of Latin America, would show that they amount to an impressive capital (financial, human, trust, interpersonal, etc.) that remains largely unexploited. Much could be done with a modicum of coordination and real efforts at developing synergies.

The present lack of coordination is based on much ignorance about the potentialities of LAC for Canada. This is the main explanation for the broad range of viewpoints in Canada about LAC. There is little knowledge, therefore little agreement exists on what has to be done, and little commitment to do anything materializes. This is why parliamentary hearings on the challenges and choices facing Canada in LAC might be most productive cognitively, but also, as a result, economically and politically. They might resolve many of the differences of opinion within Canada and even be the source of a renewed and somewhat coherent Canadian hemispheric strategy.

This will do little, however, to ensure that the existing conflicting strategies struggling for a viable compromise within the hemisphere will be reconciled (Iglesias and Rosenthal 1995). Therefore it cannot be expected that progress toward an hemispheric governance regime (however balkanized) will be anything but slow.

And again, this may not be all bad, for Canada is unprepared for any rapid evolution. It has to work obliquely and subtly at developing not only a special place in the geo-governance of the hemisphere, but also the new "capabilities" necessary to acquire the different forms of leadership role that may fit Canada's role within the hemisphere. As we indicated, these capacities are not only organizational and institutional, they are also personal. For instance, it is clear that Canada will not be able to play a full role in LAC without our collective Canadian linguistic capabilities being improved.

Many obstacles remain for a successful integration (even *par morceau*) of the Americas after 2005, and one may find many reasons (reversal of economic and political fortunes in Latin America, for instance) to ignore the challenges ahead (Wrobel 1998). In our view, the present dissipation of Canada's external efforts *à tout vent et dans toutes les directions* is unwise; Quebec's focus on LAC is by contrast both strategically and tactically effective. Some coordination and mutual learning may be in order between the different fragments of the Canadian system.

The new millennium may be a unique occasion to re-evaluate Canada's overall strategy in the Americas, and to re-assess the role

Canada and its provinces wish to play, separately or together, in the hemispheric governance.

Bibliography

Ashby, W.R. 1960. *Design of the Brain.* London: Allen Lane The Penguin Press (2nd Ed.)

Atkins, G.P. 1993. "Institutional Arrangements for Hemispheric Free Trade" *The Annals of the American Academy of Political and Social Science*, 526, March, 183-194.

Axline, W.A. 1997. "NAFTA, ALADI and the Proliferation of Bilateralism in the Americas" *Canadian Journal of Latin American and Caribbean Studies*, 22 (44), 101-126.

Bellah, R.N., R. Madsen, W.M. Sullivan, A. Swidler, S.M. Tipton 1991. *The Good Society*. New York: Alfred A. Knopf.

Berry, A., L. Waverman, A. Weston 1992. "Canada and the Enterprise for the Americas Initiative: A Case of Reluctant Regionalism" *Business Economics* 27(2), 31-39.

Best, M. 1990. *The New Competition.* Cambridge: Harvard University Press.

Bhagwati, J. 1997. "Fast Track to Nowhere" *The Economist*, October 18.

Bhalla A.S. and P. Bhalla 1997. *Regional Blocks*. New York: St Martin's Press.

Boulding, K.E. 1970. *A Primer on Social Dynamics.* New York: The Free Press.

Carlsson, I. and S. Ramphal (eds) 1995.*Our Global Neighbourhood – The Report of the Commission on Global Governance.* Oxford: Oxford University Press.

Christie, K.H. 1993. "Different Strokes: Regionalism and Canada's Economic Diplomacy" Ottawa: DFAIT Policy Staff Paper – No. 93/08 (May).

Courchene, T.J. and C.R. Telmer 1998. *From Heartland to North American Region State*. Toronto: University of Toronto, Faculty of Management.

Dahl, R.A. 1989. *Democracy and Its Critics.* New Haven: Yale University Press.

Daudelin, J. and E.J. Dosman 1998. "Canada and Hemispheric Governance: The New Challenges" in F.O. Hampson and M.A. Molot (eds) *Leadership and Dialogue: Canada Among Nations 1998*, Toronto: Oxford University Press, 211-238.

Emery, F.E. and E.L. Trist 1965. "The Causal Texture of Organizational Environments" *Human Relations, 18,* 21-32.

Emmott, B. 1999. "Freedom's Journey – A Survey of the 20th Century" *The Economist*, Sept. 11, 44p.

Falk, R. 1999. "The Future of Sovereign States and International Order" *Harvard International Review*, 21 (3), 30-35.

Foa, U.G. 1971. "Interpersonal and Economic Resources" *Science*, 3969:345-351.

Garcia, F.J. 1997." "Americas Agreements"—An Interim Stage in Building the Free Trade of the Americas" *Columbia Journal of Transnational Law*, 35(1) 63-130.

Gordon, B.K. 1998. "The Natural Market Fallacy—Slim Pickings in Latin America" *Foreign Affairs*, 77 (3) 13-16.

Held, D. 1995. *Democracy and the Global Order*. Stanford: Stanford University Press.

Hock, D.W. 1995. "The Chaordic Organization" *World Business Academy Perspectives*, 9 (1), 5-18.

Huffbauer, G.C. and J.J. Schott 1994. *Western Hemisphere Economic Integration*.Washington: Institute for International Economics.

Huntington, S.P. 1993. "The Clash of Civilizations?" *Foreign Affairs*, 72 (3), 22-28.

Iglesias, E.V. and G. Rosenthal (eds) *Trade Liberalization in the Western Hemisphere*. Washington: Inter-American Development Bank/ Economic Commission for Latin America and the Caribbean.

Keen, P.G.W. 1999. "Transforming Intellectual Property Into Intellectual Capital: Competing in the Trust Economy" in N. Imparato (ed) *Capital for our Time*. Stanford: Hoover Institution Press, 3-35.

Laurent, P. et G. Paquet 1998. "Epistémologie et économie de la relation" *Coordination et gouvernance distribuée*. Paris/Lyon: Vrin.

Leadbeater, C. 1999. *Living on Thin Air*. London: Viking

Lind, M. 1992. "The Catalytic State" *The National Interest*, 27 (Spring), 3-12.

Lipsey, R.G. and P. Meller (eds) 1997. *Western Hemisphere Trade Integration*. New York: St Martin's Press.

Luke, T.W. 1991. "The Discipline of Security Studies and the Codes of Containment" *Alternatives*, 16 (3), 315-344.

Luttwak, E.N. 1990. "From Geo-politics to Geo-Economics: Logic of Conflict, Grammar of Commerce" *The National Interest*, 20 (Summer), 17-24.

March, J.G. and J.P. Olsen 1995. *Democratic Governance*. New York: The Free Press.

Metcalfe, L. 1998. "Flexible Integration in and after the Amsterdam Treaty" in M. den Boer, A. Guggenbühl, and S. Vanhoonacker (eds) *Coping with Flexibility and Legitimacy after Amsterdam*.

Maastricht: European Institute of Public Administration, 11-30.

Moati, P. et E.M. Mouhoud 1994. "Information et organisation de la production: vers une division cognitive du travail" *Economie appliquée*, 46(1), 47-73.

Naisbitt, J. 1994. *Global Paradox*.New York: Morrow & Company.

Tuathail, G. Ò., S. Dalby, P. Routledge 1998. *The Geopolitics Reader*. London: Routledge.

Ogilvy, J.A. 1986-87. "Scenarios for the Future of Governance" *The Bureaucrat 15(4), 13-16.*

Ostry, S. 1997. *The Post Cold War Trading System.* Chicago: The University of Chicago Press.

Paquet, G. 1978. "The Regulatory Process and Economic Performance" in G. Bruce Doern (ed), *The Regulatory Process in Canada.* Toronto: MacMillan, 34-67.

Paquet, G. 1996. "The Strategic State" *Ciencia Ergo Sum*, 3 (3), 1996, 257-261 (Part 1); 4 (1), 1997, 28-34 (Part 2); 4 (2), 1997, 148-154 (Part 3).

Paquet, G. 1997. "States, Communities and Markets: The Distributed Governance Scenario" in T.J. Courchene (ed.) The Nation-State in a Global Information Era: Policy Challenges The Bell Papers on Economic and Public Policy (Kingston: The John Deutsch Institute for the Study of Economic Policy), 25-46.

Paquet, G. 1998. "Canada as a Disconcerted Learning Economy: A Governance Challenge" in *Transactions of the Royal Society of Canada*, Sixth Series/Volume VIII (1997), 69-98.

Paquet, G. 1999a. *Governance Through Social Learning.* Ottawa: The University of Ottawa Press.

Paquet, G. 1999b. "La résilience dans l'économie" *L'Agora*, 7(1), 14-17.

Paquet, G. 1999c. *Oublier la Révolution tranquille.* Montréal: Liber.

Paquet, G. 1999d. "Tectonic Changes in Canadian Governance" in L.A. Pal (ed.) *How Ottawa Spends 1999-2000: Shape Shifting Canadian Governance Toward the 21st Century.* Toronto: Oxford University Press, 75-111.

Paquet, G. 1999e. "Governance and Social Cohesion: Survivability in the 21st Century" in *Transactions of the Royal Society of Canada*, Sixth Series, Vol. IX (1998), 85-116.

Paquet, G. 1999f. "Innovations in Governance in Canada" *Optimum*, 29 (2/3), 71-81.

Paquet, G. 2000. "Canada 2015: The Governance Challenge" *Ivey Business Journal* 64(3), 57-61

Perroux, F. 1960. *Économie et société.* Paris: Presses Universitaires de France.

Polanyi, K. 1957. "The Economy as Instituted Process" in K. Polanyi, M. Arensberg, and H.W. Pearson (eds) *Trade and Markets in the Early Empires.* New York: The Free Press, 243-270.

Preston, L.E. and D. Windsor 1992. *The Rules of the Game in the Global Economy.* Boston: Kluwer Academic Publishers.

Purvis, A. 1999. "New Force in the Hemisphere" *Time* [magazine], 153 (25) June 28.

Ross, M. 1954. *Our Sense of Identity.* Toronto: The Ryerson Press.

Saez, R.E. 1997. "Trade and Investment Between Canada and the LAIA Countries" in R.G. Lipsey and P. Meller (eds) *op.cit.* 232-248.

Sheck, C., C. Robertson, J. Khokhar, N. Dimic, and K. Christie 1994. "Canada in the Americas: New Opportunities and Challenges" DFAIT Policy Staff Paper – No. 94/06 (April)

Time [magazine] 1999. *Canada 2005*. 153 (25) June 28.

v.N. Whitman, M. (1999) *New World, New Rules*. Boston: Harvard Business School Press.

Weintraub, S. 1993. "Western Hemisphere Free Trade: Probability or Pipe Dream?" *The Annals of the American Academy of Political and Social Science*, 526, March, 9-24.

Weiss, L. 1998. *The Myth of the Powerless State*. Ithaca, NY: Cornell University Press

Wonnacott, R.J. 1996. "Trade and Investment in a Hub-and-Spoke System versus a Free Trade Area" *The World Economy*, 19, 237-252.

World Bank 1999. *World Development Indicators*. Washington

Wrobel, P.S. 1998. "A Free Trade Area of the Americas in 2005?" *International Affairs*, 74 (3), 547-561.

J. Anthony VanDuzer

J. Anthony VanDuzer

To Whom Should Corporations Be Responsible? Some Ideas for Improving Corporate Governance

Abstract

Corporations are ubiquitous. The question to whom corporations are responsible is a fundamentally important policy issue for every state. How best to respond to this question is the subject of vigorous debate and has been the subject of recent legislative activity in the United States. Corporate governance models in different countries suggest a range of possible answers. And yet, academic and public policy discourse in Canada on the appropriate beneficiaries of corporate accountability has been constrained. With few exceptions, the consistent Canadian position has been that corporations are responsible only to their shareholders.

This paper analyses the theoretical and practical challenges to the primacy accorded to shareholder interests in today's marketplace. A framework is developed for thinking about the extent to which non-shareholder interests should be accommodated in a Canadian corporate governance regime. In light of this framework, some suggestions are made regarding how this might be done.

Résumé

Les sociétés commerciales ont don d'ubiquité. Pour tous les États, la question de savoir à qui elles doivent des comptes est une question importante de politique. La meilleure façon d'y répondre suscite une vigoureuse polémique et a fait récemment l'objet de nombreuses interventions législatives aux États-Unis. Les modèles de gouvernance adoptés par l'entreprise dans différents pays ouvrent sur une large palette de réponses possibles. Or, le discours théorique et politique qui a cours au Canada à propos de l'identité des justes bénéficiaires de l'imputabilité du secteur privé s'est trouvé entravé. À quelques exceptions près, le principe a toujours été, au Canada, que l'entreprise ne devait rendre compte qu'à ses seuls actionnaires.

Cette communication analyse les remises en cause théoriques et pratiques de la primauté accordée aux intérêts de l'actionnaire dans le secteur privé d'aujourd'hui. Nous y proposons un cadre de réflexion quant à l'importance qu'il conviendrait de donner aux intérêts des non-actionnaires dans un régime de gouvernance d'entreprise au Canada. À partir de ce cadre de réflexion, nous offrons quelques suggestions sur les moyens d'y arriver.

Introduction

It is a trite observation that corporations have an enormous and multi-dimensional impact on Canadian society. Decisions taken by management on a day-to-day basis affect the profitability of the corporation and the value of shareholder investments as well as the security of the stakes of others with financial claims against the corporation, including employees, creditors, customers and suppliers, and the interests of the community in which the corporation operates. The interests of these stakeholders coincide in most cases: all have a general interest in the financial health of the corporation. Sometimes, however, the value of the shareholders' investment in the business of the corporation may be maximized only at the expense of other stakeholder interests. Shutting down a money-losing plant to preserve corporate profitability is one example. The workers laid off and the community in which they live and work may suffer greatly from such a decision designed to safeguard shareholders' financial interests. Seeking to maximize profits by scrimping on pollution control technology is another example of management imposing a cost on society for the benefit of shareholders.

As a society, one of the ways we seek to prevent some of these sorts of adverse social effects is direct regulation. It is also increasingly commonplace to hear claims that corporations should be responsible for the effects of their actions on society, even in the absence of direct legislative intervention.[1] Assertions by corporate managers confirm that managers view themselves as accountable to a wide range of societal interests.[2] Recently, we have witnessed greater concern about the social impact of corporate action on two other fronts. Both individual and institutional shareholders have shown increasing concern about interests outside their own financial gain. The growing role of ethical investment funds and the adoption by some institutional investors of investment policies based, in part, on ethical and other non-financial considerations indicate a broadening of the dimensions of societal interests for which management will be held accountable by shareholders.[3] Consumer preferences regarding the corporations they buy from are increasingly influenced by their views on the sensitivity of corporate management to social issues and the impact of corporate conduct on society.[4]

In light of the significant social impact of corporate conduct, the increasing concerns of shareholders and consumers and the self-professed sense of obligation expressed by some corporate managers, it would seem odd if the legal norms for management behaviour imposed by the regime governing corporations in Canada did not provide for responsibility for social impacts in some way. But the general standards of behaviour established for directors and officers in Canadian corporate law do not do so. The obligation of management is to serve the interests of the corporation, which, with few exceptions, has been treated as coextensive with the financial interests of shareholders.[5]

In contrast to this seeming acceptance in Canada of the view that shareholder interests are entitled to be the exclusive beneficiaries of management responsibilities, there has been a vigorous debate on these issues in other jurisdictions, notably the United States, for a very long time.[6] Recently, American scholars using arguments based on economic theory have argued strongly that shareholder wealth maximization should be the only goal of corporate management.[7] Other scholars, however, have argued for a model of corporate law which permits consideration of the interests of other stakeholders.[8] Corporate statutes in more than half of the American states have been amended to expressly permit management to do so.[9] In European countries, the conception of the corporation has always been a broader one in which the interests of all stakeholders, not just shareholders, were to be considered in corporate decision making.[10]

In this paper, I briefly canvass the arguments in favour of the shareholder primacy norm, concluding that the case for making shareholders the exclusive beneficiary of managements' legal responsibilities is not convincing. Despite this conclusion, however, I argue that imposing a requirement on management to base their decisions on their own assessment of the relative importance of the interests of all stakeholders is not desirable. Requiring management to be responsible to all stakeholders would impose an impossible standard which managers are ill-equipped to meet and could result in their being accountable to no one but themselves. In any case, the existing shareholder primacy norm in Canada, as elsewhere, already permits a high degree of management discretion, allowing managers to take other stakeholder interests into account,

though not permitting them to abandon their primary goal of promoting shareholder interests.

Instead, I argue in favour of enhancing the ability of shareholders to assert their interests, including, in particular, those related to the social impact of corporate behaviour, and ensuring that better information regarding the social impact of corporate behaviour is provided to the capital markets in which corporate shares are traded and product markets in which corporate output is sold. The result would be to impose a discipline on managers to deal with the social impact of their actions and ensure that any bottom line benefits associated with socially responsible behaviour are realized.[11] Legal reforms can achieve this in two ways: (i) by removing existing impediments to shareholders raising social responsibility issues with management and their fellow shareholders and (ii) by requiring corporations to report on the social impact of their activities.

Part I - To Whom Should Corporate Managers Be Responsible?

Introduction

Corporations are economic organizations. Their purpose is to facilitate economic activity by encouraging entrepreneurs to engage in business. Shareholders invest the capital which is used by managers in their businesses to generate profits for their benefit. In carrying on the business, the corporation becomes the focus of a web of relationships with other stakeholders. Employees work in the business, creditors supply capital or other inputs for the business activity and the corporation will have important relationships with its customers, government and the community. Through these relationships, social benefits in terms of employment, production and consumption of products, payment of taxes and so on result from the economic activities of corporations.

Several analytical models may be applied to the problem of ascertaining to whom corporations should be responsible within this web of relationships but the most powerful analytical approach and the one which has come to dominate corporate law discourse is microeconomics.[12] Under this approach, the corporation is considered a "nexus of contracts"[13] and the rights and obligations of each stakeholder are

determined by their voluntary bargains with the others. The value-enhancing characteristics of private exchange mean that parties' bargains should be enforced and the state should not intervene to impose rules except where there are systematic impediments to the bargaining process in the form of high transaction costs or information asymmetries between the parties.[14]

In this conception, at first glance, the position of shareholders appears to be no different from that of other stakeholders. The nexus of contracts model of the corporation does not acknowledge the rhetorically powerful depiction of shareholders as the owners of the corporation which had previously dominated corporate law discourse and justified giving shareholders special protection.[15] What distinguishes shareholder interests from other interests, however, is that their value is uniquely determined by the residual value of the corporation after all other claims are satisfied. Shareholders invest in the corporation in return for shares, which represent a claim to receive what is left after all claims of other stakeholders have been paid. While the claims of most other stakeholders, such as employees and creditors, are fixed, the shareholder's claim varies with the success of the business in generating profits in excess of these fixed claims.

This residual character of shareholder claims suggests that managers should be exclusively committed to maximizing shareholder welfare for two main reasons. First, only shareholders have a positive interest in maximizing the success of the firm. Other stakeholders are indifferent to the value of the firm so long as sufficient profits are generated to satisfy their fixed claims. Second, shareholders cannot easily negotiate protection for their interests because of the positive nature of their claims. It is not possible for shareholders to fully specify what management must do for the business to be successful, whereas it is relatively easier for fixed claim stakeholders to negotiate restrictions on management which prevent the corporation from engaging in specific conduct which will jeopardize their fixed claims such as stripping assets out of the firm to the prejudice of creditors or reducing employee benefits.

However, this analysis may be criticized on several bases. First, distinguishing shareholder claims from those of other stakeholders on the basis that only shareholders have a positive interest in how well the

corporation is managed is tenuous, at least in some circumstances. Second, all stakeholders, not just shareholders, face impediments to bargaining which may prevent them from negotiating adequate protection for their interests. Finally, shareholders have the benefit of additional legal and market mechanisms to help ensure that management is responsive to their interests. Each critique is discussed in turn.

1. There are some circumstances in which other stakeholders have what amounts to a positive stake in management decision making.

Management who are responsive only to shareholder interests may be encouraged to manage the corporation in a way that reduces the value of the firm to the prejudice of all fixed claimants, including employees and creditors. Where the firm is on the verge of insolvency, for example, shareholders have nothing to lose since the value of their residual claim is nil. Managers may seek to obtain some return for shareholders by investing the corporation's resources in highly risky projects which provide the possibility of sufficiently high returns to generate some benefit to shareholders even if the likelihood that such returns will be received is remote. If, as is expected, the return is not realized, shareholders are no worse off. The holders of fixed claims, however, will be prejudiced by such a strategy.[16] Consequently, fixed claim holders, just like shareholders, will have a significant stake in day-to-day management decisions of the firm, at least in this situation.

Employees may be considered to have a positive interest in the management of the firm in another sense. Employees make a substantial firm-specific investment in their corporate employers, which may not be easily recoverable where skills are not transferable and the job market does not provide ready alternative employment. Consequently, employees will have a substantial interest in particular management decisions which are likely to have a significant impact on the security of their jobs. These include not only decisions which are directly related to employment, such as decisions about layoffs, but also a wide range of management decisions which will affect job security by virtue of their impact on the success of the firm. In this sense, employees have a strong interest in the firm being managed effectively. This interest may not be identical to

shareholders', but it has the same character: a positive interest in how well the firm is managed.

Finally, the community in which a corporation operates has no fixed claim against the corporation. It does, however, have a positive interest in good management by the corporation to the extent that such management leads to secure and expanding local employment and tax revenues, provides effective environmental stewardship and so on.

2. *Non-shareholder stakeholders face inherent impediments to contractual bargaining.*

The nature and effect of such impediments varies depending on the stakeholder group being considered. Nevertheless, the important general point is that the primacy of shareholder wealth maximization depends upon there being few impediments, which is manifestly not the case in the real world. Real world bargaining is characterized by gaps in information which make it impossible for stakeholders to make accurate assessments of the full implications of their bargain. There are also transaction costs which preclude fully bargained agreements.[17]

Financial creditors would seem to face the fewest impediments to bargaining. Typically creditors negotiate very detailed contracts designed to protect them against management defaults which often contain strict controls on certain kinds of activities backed up by rigorous reporting requirements. Creditors often have large investments in corporations, giving them significant incentives to collect and analyse information regarding their corporate customers. For some debt instruments, prices are determined in markets and subject to credit rating review such that the likelihood that creditors will unknowingly end up bearing uncompensated risk is relatively small. Finally, any concern about creditors' ability to protect their interests by contract will be mitigated where creditors can reduce their risks on particular investments by diversifying their holdings.[18]

In contrast to creditors, employees make substantial non-diversifiable investments in the firms for which they work. As well, it is not clear from the available empirical evidence that even employees who are unionized are able to obtain adequate information to allow them to

accurately predict the likelihood of major risks to their investment, such as plant closings and other major corporate restructurings, perhaps following from takeover bids.[19] For employees who are not unionized these problems are even more substantial.[20] In general, employees do face impediments to bargaining effectively to protect their interests.

The community, defined broadly to include all people affected by corporate behaviour who do not have another defined relationship with the corporation, would appear to have the least scope for negotiating contractual protection against conduct by the corporation adverse to its interests. Unlike the other stakeholders, the community does not, typically, engage in contractual bargaining with the corporation. There is no ready context in which protections may be negotiated, nor, often, any specific input that the corporation requires from the community for which it must negotiate. As well, the individuals who make up the community suffer from serious collective action problems in relation to the corporation. The benefit to any individual of gathering information about any particular corporate decision, analysing it and organizing the community to seek to have the corporation address community concerns is small. Individual members of the community will have little incentive to initiate a challenge to corporate decision making or seek protection from corporate action because each member will hope for a free ride on the efforts of other members of the community.

If one expands the notion of community beyond those living in the vicinity of the corporation's business premises and their immediate concerns with such matters as air pollution and layoffs, to encompass the ethical norms of our broader Canadian community regarding, for example, labour, human rights and environmental standards, which might be affected by corporate conduct in Canada and elsewhere, the prospects for the negotiation of contractual protection is even more remote. The capacity of concerned citizens to identify such an issue and organize collectively to bargain with a corporation regarding a resolution of it will be negligible in most circumstances. Typically, resort to the political process will be the only option.[21]

3. Legal and market mechanisms may ensure that management will act in the interests of shareholders.

Canadian corporate statutes provide three (3) main types of protection for shareholder interests: (i) the right to vote for the election of directors; (ii) access to information rights; and (iii) shareholder remedies where management has failed to fulfil its obligations.[22] Of these, perhaps the most direct is shareholders' power to vote. If management is not maximizing shareholder returns, the shareholders acting collectively can either replace the board of directors or refuse to elect them at the next annual meeting. The ability of shareholders to ensure that directors are accountable to act in the corporation's interests through these legal mechanisms in practice, however, may be impaired for a variety of reasons.

One reason is that access-to-information rights are limited. Once a year, shareholders are entitled to receive audited financial statements and management's analysis of financial results. Material changes to the corporation's business must be disclosed to the public on a timely basis.[23] Despite these and some additional access-to-information rights, shareholders will often lack sufficient information to understand and evaluate management's performance. While adequate information and analysis may be obtainable with sufficient effort, most shareholders will not make such an effort. Because most shareholders will have a small financial stake relative to the cost of obtaining adequate information, especially considering that effective evaluation will often require paying for professional advice, they have little incentive to invest in information gathering and analysis. The benefits associated with an investment in information gathering will accrue to all shareholders regardless of their individual contribution and consequently it may seem to make sense to let others spend their money on doing it.

Even if shareholders were able to gather sufficient information and analyse it, mobilizing a large number of geographically and otherwise disparate shareholders which would be needed to defeat a management proposal or to elect a new board of directors will be difficult and costly. Again the relatively small financial stake of individual shareholders discourages collective activity.

Concerns about collective action problems of this kind have dominated the academic discourse on corporate law in the United States. In Canada, however, the marketplace is different. Seven out of ten public corporations have a controlling shareholder. In these corporations, the majority shareholder has strong incentives to hold management accountable and suffers from none of the collective action problems described above.[24] Nevertheless, this does not mean that accountability concerns vanish completely. Instead they shift to focus on the risk of the controlling shareholder and management together acting in ways which are detrimental to the interests of the corporation, such as through cooking up sweetheart deals which disproportionately benefit the controlling shareholder at the expense of the corporation.[25]

The increasingly active participation in the securities markets of institutional investors with large financial interests in individual firms and the resources and contacts to facilitate coordinated behaviour may result in more effective monitoring of opportunistic behaviour by management and of collusion between management and controlling shareholders.[26] However, commentators have suggested that while the presence of institutional investors may reduce collective action problems, such problems continue to exist and there may be other impediments to the exercise by institutional shareholders of their shareholder rights.[27]

Other impediments exist as well. For example, under Canadian corporate statutes, for the most part, the directors determine what goes on the agenda for meetings, how it is described and what information goes to shareholders.[28] This tends to constrain the ability of shareholders to use their rights to address their concerns. Again, the presence of a controlling shareholder and large institutional investors may mitigate this concern for particular corporations.

Shareholder litigation to seek the enhanced shareholder remedies provided for in modern Canadian corporate statutes[29] also faces certain challenges. Most importantly, litigation is an expensive, time-consuming and uncertain exercise. Also, despite the improvements made recently in some jurisdictions, such as Ontario, in facilitating class actions by shareholders, the impediments to shareholders acting collectively to vote apply equally to shareholder litigation. Consequently,

shareholder litigation as a mechanism for holding management accountable to shareholders suffers from significant weaknesses.

Looking at corporate law rules, however, only discloses one set of accountability mechanisms. Where shares are traded in a marketplace the dynamic of the marketplace itself will impose a certain discipline on management to act in shareholders' interests. While it is beyond the scope of this paper to describe the vast empirical and theoretical literature which has developed on this subject it is important to point out some of the basic insights which a consideration of market forces yields.[30]

In markets for corporate shares and other securities, prices are set, as in other markets, as a result of supply and demand, the buying and selling activity of people trading in the market. People decide to buy or sell shares based on their assessment of the value of the shares, taking into account all the information they have. Empirical evidence has demonstrated that prices in markets for securities tend to reflect accurately all publicly available information.[31] This characteristic, called market efficiency, means that all public informat. n about the risks of management not being sufficiently attentive to snareholder interests should be factored into the price. Expressed another way, a prospective investor should worry less about the risk of managers engaging in opportunistic behaviour or the expense of monitoring managers to ensure that they do not (collectively referred to as "*agency costs*")[32] because the price of the shares will already be reduced to reflect these agency costs at the time she bought them.

Unfortunately, there are still risks associated with opportunistic behaviour by management. For example, not all risks of such behaviour are foreseeable and so may not be factored into share price. Also, studies of stock markets suggest that prices do not reflect non-public or insider information known only to officers and directors of the corporation.[33] Agency cost risks known only to insiders will not be factored into share price. Nevertheless, to the extent that agency costs are reflected in the share price, the corporate law mechanisms designed to monitor and control agency costs become less important.

What is sometimes called the market for corporate control also reduces concerns about agency costs. A corporation which is not being managed in the interests of maximizing the value of shareholders'

investment represents an opportunity; by acquiring sufficient shares to gain control of the corporation, a person could enhance the value of the firm by improving management. Such a change in control may be accomplished by a takeover bid: the bidder offers to buy some or all of the shares held by existing shareholders, typically at a price in excess of the current market price, in order to acquire enough shares to replace the board of directors and have the new board put in place new management. The threat of a takeover bid which, if successful, will result in the board and the officers losing their positions should encourage management to manage so as to maximize shareholder value and thus avoid making their corporation a takeover bid target. Various commentators have suggested that the discipline provided by the market for corporate control is so important that management's ability to defend against a hostile takeover bid should be severely limited.[34]

Several other market mechanisms may be identified. One is the market for managers' services. Managers will be discouraged from engaging in self-interested behaviour by the adverse effect such behaviour may have on their reputation and consequent prospects for promotion and future employment.[35] Also product markets will provide some discipline on management behaviour. The success of a firm in today's intensely competitive marketplace requires management to produce an attractive product at a reasonable price if it is to survive, much less prosper. This discipline will tend to rebound to shareholders' interest by ensuring that the firm is well managed with the result that the value of shareholders' investments is maximized.[36]

The existence of these market mechanisms to address agency problems has led some corporate law scholars to assert that legal rules can only be justified to the extent that the market can be shown not to operate effectively. Some such scholars view markets as working well, leaving a narrow sphere of operation for corporate law.[37] Others have suggested that the capital and corporate control markets do not work efficiently, so that a substantial role must be played by mandatory corporate law rules.[38]

While there is some uncertainty regarding the effectiveness of this array of legal procedural methods and market mechanisms which help to ensure that management's behaviour is consistent with the interests of

shareholders, considering them altogether, the case for making shareholders the exclusive beneficiary of management's duty seems weak. This conclusion is confirmed by our analysis of the position of non-shareholder stakeholders who suffer from various kinds of barriers to their ability to fully negotiate contractual protection. Consequently, the Canadian rule that corporate managers are exclusively responsible to shareholders seems difficult to justify.

Part II - Requiring Managers to Be Responsible to Non-shareholder Stakeholders Will Not Work

Introduction

I have argued that the case for singling out shareholders as the exclusive beneficiary of management duties is not convincing. The next question is to what extent this argues for changing the existing shareholder primacy norm. Should we be requiring managers to be responsible for the interests of all stakeholders? Would doing so improve corporate governance in Canada by making managers more attuned to social concerns? In this section, I will argue that there are serious problems which would arise if the shareholder primacy rule were abandoned. In the following section, I suggest some better but more limited alternatives for addressing social responsibility concerns.

1. Lack of certainty and potential for self-serving behaviour by management

If corporate management were obliged to take into account the interests of all corporate stakeholders, the result would be a standard of accountability which would be impossible to enforce in practice. Management would be required to assess and balance such a diverse array of interests that almost any decision could be justified as promoting some stakeholder interest. The result would be a complete absence of accountability, as well as higher frequency and cost of litigation to sort out what the duty requires in particular cases.[39] In such situations, the risk that management would engage in self-serving behaviour would be substantial.[40] Where the directors are empowered to take into account the

interests of non-shareholder stakeholders but are not required to, the risk of self-serving behaviour is enhanced, since there is no process by which management actions may be challenged.[41] No one could complain that his interests had been ignored so long as some other interest was to benefit.

Many commentators have attributed the movement in the United States to corporate law rules which expressly permit managers to take into account non-shareholder interests, at least in some circumstances, to management's selfish interest in preserving their positions.[42] It has been suggested that some of the US state stakeholder statutes were enacted for the singular purpose of permitting a large business incorporated in the state to take action to fend off an unwanted takeover bid which, if successful would cost current management their jobs. While shareholder interests might have favoured the bid being allowed to proceed, the ability to put other interests, such as those of employees, ahead of shareholders allowed management to block it. Management could justify its opposition to the bid on the basis that it was protecting the jobs of the employees who would be laid off under the takeover bidder's restructuring plans.[43]

2. Managers are not equipped to make trade-offs between interests

Opponents of management duties to stakeholders emphasize that management does not have the expertise, nor the information to make assessments of the appropriate course of action based on a consideration of all the conflicting interests which may be affected.[44] Again, this seems to be a claim which is most convincing in relation to particular non-shareholder constituencies. In relation to employees, creditors, suppliers and customers, management must continually engage in an arithmetic which assesses the nature of these interests and their relation to the corporation's business, if the business is to survive. It is only in relation to broader community interests where this point is telling. While management may often take into account the interests of the community, they are likely to be more abstract and difficult to assess than those of the other stakeholders.

3. *Ability of the shareholder primacy norm to accommodate interests of other stakeholders*

The rule that management must take into account shareholders' interests allows management considerable flexibility to take into account the effect of a particular action on other stakeholders so long as doing so may be justified as reasonably incidental to carrying on the corporation's business for profit. How much room this leaves to take into account the interests of other stakeholders depends on how broadly one is willing to interpret "reasonably incidental". Although it is inherently problematic to try to articulate what the appropriate interpretation is, it is possible to identify some of the factors upon which an assessment of reasonableness will depend. These include how far into the future the benefits may arise and how indirect the benefits may be. If one is prepared to consider as being reasonably incidental to the corporation's business actions which have no direct or immediate benefit in terms of profits, many actions primarily intended for the benefit of non-shareholder stakeholders may be upheld. For example, enhancing employee benefits may reduce short term profits but may have benefits in terms of improved employee relations and fewer days lost to strikes and a better public image, all of which may increase future profits. Although there have been statements by Canadian courts suggesting a broad view of what may be considered reasonably incidental in reviewing decisions of management challenged by shareholders,[45] the rhetoric typically used by courts has suggested a narrow conception.[46] At the same time, however, the courts tend to be highly deferential to management in matters of business judgement.[47] The end result is that, despite the courts' rhetoric, there is a broad scope for management to determine the extent to which accommodating non-shareholder stakeholder interests is consistent with maximizing the value of shareholder interests in particular situations.

A broad conception of shareholder interest which takes other interests into account may be encouraged, for example, by management's desire to head off more intrusive direct regulation. Where firms can get out ahead of direct regulation by setting standards exceeding what is currently required, they may be able to avoid such regulation altogether, or at least be able to time the move to higher standards in accordance with their own priorities as opposed to the state's. In either case, firms

may advocate a regulatory regime consistent with the improvements already implemented by them. While this may be costly to shareholders in the short run and appear to elevate other interests above their own, it may be justifiable in the long run on the basis of reduced compliance costs and the reputational benefits associated with being seen to be an industry leader.

Similarly, management may be inclined to grant concessions to employees and live up to any expectations employees may have because their failure to do so will reduce the security of all informal implicit bargains with stakeholders. The resulting low levels of mutual trust will impair the efficiency with which the corporation may operate, inducing greater reliance on costly explicit contract negotiation in its relations with customers and suppliers as well as employees.[48]

These are just two examples of the wide range of management decision making in which the interests of shareholders and many other stakeholders are likely to be congruent. In general, maximizing shareholder value will often have the effect of increasing the security of any fixed claim of a stakeholder against the corporation, including those of creditors, employees, suppliers and customers.[49] There is also increasing evidence that socially responsible behaviour by corporations may be profitable.[50]

Part III - Options for Protecting Community Interests

Introduction

So far, I have argued that the case in favour of the existing legal rule requiring corporate managers to act exclusively in the best interests of shareholders is not compelling. Other stakeholders, at least in some situations, will have a larger stake in corporate decision making and cannot be protected adequately by contract. Shareholders have legal procedural protections which they may use to control management, though there may be practical impediments to their doing so, and, in any case, the stock market, the market for corporate control, the market for management services and product markets should all help to ensure that management is responsive to shareholder interests. Nevertheless, moving to a regime in which management is accountable to all

stakeholder interests, or may balance shareholder interests with other stakeholder interests, is fraught with uncertainty and risks relieving management of any accountability at all.

Is there no alternative to maintaining a second-best rule? One of the conclusions drawn from the foregoing discussion is that there is some prospect for stakeholders in an explicit contractual relationship to negotiate protection for themselves. This point is most compelling in relation to creditors, though it has some force in relation to suppliers and organized labour. It has less weight in relation to those not in an explicit contracting relationship with the corporation, such as the community.

In a broad sense, the interests of the community include compliance with the ethical norms of the community in terms of, for example, human rights, minimizing environmental degradation as well as more parochial concerns such as local employment. MacIntosh and other proponents of the shareholder primacy norm recognize that such community interests cannot easily be disregarded on the basis that there is scope for the negotiation of explicit contractual protection.[51] Instead, these commentators argue that the appropriate way to address such issues is not through corporate law at all, but rather through direct state action. They suggest that for making such assessments, the state has comparative advantages over the corporation in terms of access to more policy-relevant information and a mechanism to establish a set of distributional preferences. As well, where local communities are affected by some action, the members of such communities have access to the political process to obtain direct state action.[52]

The availability of political action is not a complete answer, however. As discussed above, individual members of a community are likely to suffer serious collective action problems in making their case to their elected representatives, even where corporate activities directly affect them, such as by emitting noxious fumes into the local environment. Corporations, by contrast, may be well positioned to mount a focused coherent defence against any such efforts. Where the issue is the consistency of corporate behaviour with community ethical norms relating to human rights and similar issues rather than a specific significant injury to an identifiable group, the likelihood of a political solution becomes more remote.

The remainder of this paper addresses how community concerns about social responsibility issues may be addressed within the framework of existing corporate law. The two policy instruments discussed are shareholder proposals and mandatory disclosure by corporations of their record on social responsibility.

Shareholder proposals

Usually, the agenda for shareholder meetings in large corporations where shareholders are remote from management is set by the board of directors. The corporate statutes in a majority of Canadian jurisdictions, however, do provide a limited right for shareholders to add items to the agenda including the amendment of by-laws and articles.[53] Any shareholder entitled to vote may submit to the corporation a "proposal" giving notice of any matter he or she would like to discuss. For public corporations, the proposal must be included, along with a brief supporting statement from the proposing shareholder, with the notice of meeting and other supporting material sent to shareholders in connection with the meeting. Essentially, the proposal mechanism is intended to facilitate communication between shareholders at the expense of the corporation. It has significant potential to address issues of corporate social responsibility of concern to shareholders, both encouraging management to be more socially responsible and ensuring that any bottom-line benefits associated with socially responsible behaviour are realized.

Shareholder proposals may be a source of innovative thinking about social responsibility issues. For example, in 1990, a shareholder of Noranda Inc. made a proposal for the corporation to provide a public report on its environmental policies. Although the proposal was supported by only eight (8) per cent of shareholder votes, Noranda implemented such a reporting scheme. At the time, few other firms were providing this level of disclosure. Today, in part because of Noranda's leadership, such reporting is an industry standard.[54]

A proposal made to Placer Dome in 1988 is another example of how shareholder proposals may anticipate future issues. A shareholder proposed an independent assessment of the environmental and socio-economic impact of the corporation's Marcopper Mine in the Phillippines. The proposal was not passed and no assessment was undertaken.

Within eight years the mine was closed and criminal charges had been laid against some of the corporation's employees in connection with the corporation's environmental practices.[55] If management had acted on the proposal, perhaps these serious advers effects on the corporation and the local community could have been avoided.

The Placer Dome example also suggests how shareholder proposals may be effective in areas where direct regulation is not feasible. Many shareholder proposals have raised concerns regarding a firm's international operations which are out of reach of Canadian regulators. For example, in 1986, a proposal was made to Alcan requesting the corporation to divest its interests in South Africa. One week before the annual meeting, the corporation sold its interests and the proposal was withdrawn.[56]

These examples illustrate the appropriate function of shareholder proposals. They are useful to initiate debate and communicate to management the concerns of shareholders. Management is obliged to act in the interests of shareholders and the proposal mechanism provides a way for management to better assess how to do so. The proposal is not and should not be a device for substituting shareholder judgement for management's on how shareholder interests should be served. Its purpose is rather hortatory and educative.[57]

Under Canadian law, there are certain limits on the content of a proposal, designed to prevent frivolous use of this process or the raising of issues not connected with the business of the corporation. These limitations have been interpreted broadly by the courts in Canada to allow corporations to exclude proposals relating to social responsibility issues.

For example, in *Varity Corp.* v. *Jesuit Fathers of Upper Canada*[58] a shareholder sought to have a corporation circulate a proposal to have the corporation divest its interests in South Africa. Some business rationale was provided. The corporation refused. When the shareholder challenged the refusal in court, it was held that the primary purpose of the proposal, based on the language used and the supporting statement, was the abolition of apartheid in South Africa. This meant that the proposal was primarily for the purpose of promoting a political or social cause, a basis for exclusion under the federal corporate statute[59] so the corporation was not obliged to distribute it. The court acknowledged that there

was also a more specific purpose relating to the business of the corporation, the divestment of its interests in South Africa, but held that this did not prevent the exception from operating. Similarly in *Greenpeace Foundation of Canada v. Inco Limited*[60] a proposal to institute pollution control measures to limit sulphur dioxide emissions was held to be for the purpose of advancing an environmental cause and so fell within the exception.

More recent cases suggest that the attitude of the courts may be shifting slightly in favour of shareholder participation through the proposal mechanism, at least in relation to corporate governance issues. In its 1996 decision in *Verdun* v. *Toronto-Dominion Bank*,[61] the Supreme Court of Canada stated that it was evident that the shareholder proposal provisions "constitute an effort by the legislature to promote shareholder participation in the management of companies."[62] The Court, nevertheless, held that the shareholder could not make the proposals because he was not a registered shareholder. In 1997, the Superior Court of Quebec upheld the right of a shareholder of one of the banks to make proposals raising a range of corporate governance issues which the bank had sought to exclude.[63] Among other things, the proposals dealt with increasing managerial accountability and reducing levels of executive pay.

Perhaps as a consequence of the broad interpretation of these legislative exclusions, there have been only a small number of proposals each year in Canada and very few dealing with social issues.[64] The situation in the United States is dramatically different. Annually as many as 900 shareholder proposals are made and many of these relate to social issues.[65] Why this difference?

First of all, the numbers mentioned do not give a true perspective on the use and significance of proposals. Canadian observers have noted that many proposals are withdrawn before meetings on the basis of discussions with management.[66] Since such a practice is equally likely to occur in the United States, however, it would not seem to explain the discrepancy.

The case law discussed above suggests that the restrictions in the corporate statutes may be partly to blame for the low use of the proposal process in Canada. As noted, where corporations have objected to a

proposal relating to social responsibility, the courts have typically accommodated them even where the issue bore a relationship to the long run viability of the corporation. This approach seems clearly inconsistent with the shareholder primacy norms the courts endorse so fervently.

In contrast to the Canadian system, US corporations are permitted to exclude shareholder proposals based on their content only in very limited circumstances. While the Rules of the Securities and Exchange Commission (the "*SEC*") once contained a broad exclusionary provision applying to social responsibility proposals similar to that in the *Canada Business Corporations Act*, this is no longer the case.[67] The relevant grounds for exclusion now provide that exclusion is permitted when

- the proposal relates to the redress of a personal claim or grievance against the company or any other person, or it is designed to result in a benefit to the shareholder or to further a personal interest which is not shared by the other shareholders at large, or
- the proposal deals with a matter relating to the company's ordinary business operations.[68]

The SEC's interpretation of these exceptions has varied over the years,[69] though it has not prevented substantial numbers of proposals on social policy issues.[70] In 1998, the Commission issued a revised rule suggesting a greater openness to proposals dealing with social policy issues relating to employment, such as affirmative action.[71]

In addition to narrower exclusions, the US system puts the onus on the corporation to show that it is entitled to refuse to circulate a proposal. If management wants to exclude a proposal it must submit the proposal to the SEC for its consideration. The proposal maker may submit a statement in support. The corporation must demonstrate that it is entitled to exclude a proposal. If the SEC staff agree with the corporation a "no action" letter is issued in which the staff advise that it will not recommend to the Commission that enforcement action be taken. If the SEC staff determine that the corporation is not permitted to exclude the proposal it will issue an "action letter" indicating that it will recommend action by the Commission to require the proposal to be included. In most

cases, the decision of the staff is determinative of the issue of whether the corporation includes the proposal.[72]

By contrast, the Canadian rules dealing with shareholder proposals put the onus on shareholders. If management refuses to circulate a proposal, a shareholder can only challenge the refusal in court, a time-consuming and expensive process.

Another difficulty under the Canadian rules is that if a shareholder making a proposal seeks to speak to another shareholder about it or communicates in writing there is a risk that he or she would become obliged to prepare and send to all shareholders a circular which includes extensive disclosure regarding the person making the proposal and other information.[73] Industry Canada recently suggested that "solicitation" may consist of "almost any expression of views, including, for example, an informal discussion among shareholders or a personal letter from one associate to another criticizing the quality of a company's management."[74] On this view, most communications between shareholders relating to a proposal may result in an obligation to incur the effort and expense of preparing and distributing a circular.[75] Failure to comply may lead to a fine not exceeding $5,000 or a prison term of up to six months or both.

Again, US law is much more accommodating to shareholders. The obligation to distribute a circular is not triggered by any oral communication.[76] As well, it exempts all other communications except those by "any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit for a successful solicitation that will not be shared *pro rata* by all other shareholders of the same class of securities."[77] This exemption would be available in connection with most proposals relating to issues of social responsibility.

Some commentators have expressed the concern that relaxing the rules regarding the circulation of shareholder proposals to follow the US example would risk creating excessive demands upon the corporations. Kazanjian raises the prospect of unrestrained shareholder proposals undermining the existing system of management control and responsibility by creating "some form of sporadic 'town hall' democracy."[78] Evidence from the US experience, however, would seem to provide no basis for such concerns.[79]

Shareholder proposals, potentially, are an important mechanism by which management may be made aware of shareholder expectations and insights. As suggested above, the purpose of the proposal should not be to allow shareholders to manage but rather to raise issues for consideration, or, as one commentator has put it, shareholder proposals can have a "sunlight effect."[80] In light of this function, there would seem to be no compelling need to change the existing system to render them binding as some advocates have suggested.[81] Rather, the goal of corporate law reform should be to remove the impediments to making shareholder proposals an effective instrument. In this regard the American system provides a ready model.[82]

Corporate disclosure regarding social responsibility

One of the goals of shareholder proposals, as illustrated by the examples discussed above, may be simply corporate disclosure regarding the social consequences of the corporation's activities. Recently, an innovative approach to corporate disclosure on corporate governance issues was adopted by The Toronto Stock Exchange (the "*TSE*") which provides a possible model for corporate disclosure regarding social responsibility.

In 1995, the TSE amended its rules applicable to listed companies in an effort to enhance the effectiveness of corporate governance. The amended rules set out some benchmarks for best practices in corporate governance. TSE-listed corporations are not required to meet the benchmarks, but rather to disclose their governance practices and to discuss the extent to which they do not comply.[83]

This approach could be readily adapted for use in the social responsibility context. While the development of benchmarks or aspirational best practices in relation to social responsibility would be complex and require research, substantial work has already been done. Many large corporations and industry associations have voluntarily adopted codes of conduct that address some social responsibility issues. Significantly, the Conference Board of Canada released a major study in 1999, which included a Corporate Social Responsibility Assessment Tool, which could serve as a useful starting point for the development of mandatory disclosure rules.[84]

While it is far beyond the scope of this paper to suggest the content of such a mandatory disclosure regime, it is possible to suggest some of the benefits of such an approach. First, it permits ready comparability across corporations, though admittedly consistency in the questions to be answered may not lead to consistency in the comprehensiveness of the information provided.[85] Second, it gives corporations substantial flexibility in determining whether and how to conform to the benchmarks and how to address concerns raised by its disclosures. This is particularly important given the differing scale and scope of operations of corporations in Canada.[86] The thrust of a mandatory disclosure regime is to educate regarding best practices and focus management attention on social responsibility issues. Management should remain able to develop an approach to social responsibility issues which is appropriate for their business. The alternative of mandating specific practices, inevitably, would require setting the standard at some relatively low level attainable by all corporations. Third, and most important, the disclosure regime relies on the marketplace to assess the significance of management's behaviour for the corporation.[87] The available evidence suggests that disclosure called for under the TSE rules has resulted in pressure to comply with the benchmarks established and some progress toward meeting them.[88]

A proposal for mandatory disclosure along the lines of the TSE rules on corporate governance would have critics. Inevitably, there would be costs associated with understanding the obligations, considering their relevance and preparing the disclosure statements. Empirical work in the United States has not demonstrated clear benefits associated with mandatory disclosure rules imposed by securities regulators.[89] Nevertheless, given the examples of ways in which Canadian law mandating specific disclosure lags behind the law south of the border[90] and the evidence that Canadian corporations also significantly lag behind US corporations in the adoption of voluntary codes of conduct for dealing with social responsibility,[91] disclosure rules may have some value.

Conclusions

The structures of accountability for Canadian corporations need to be modified to improve corporate social responsibility, not to change their

basic orientation which provides accountability of management to shareholders, but to refocus them to ensure that accountability corresponds to all interests of shareholders, including their social and ethical concerns. In part, this would be achieved by relaxing the rules which limit what types of issues shareholders may bring before meetings of shareholders.

As well, requirements for management to disclose the social and ethical effects of their decision making would better enable shareholders to hold them accountable. Both are modest changes, building on mechanisms that currently exist. They are mutually reinforcing and would serve to promote good corporate citizenship throughout corporate Canada, instead of imposing the burden exclusively on those who choose to assume it and are, for that reason, least likely to need encouragement. At the same time, they would help to ensure that credit is given for social responsibility initiatives where it is due.

While there are other methods to ensure that management is sensitive to social responsibility concerns, most are more intrusive and are more likely to hinder management's ability to respond quickly and effectively to the constant challenge of operating a business in the increasingly competitive environment existing today.[92] The suggestions made, while not cost free, are based on a commitment to the effective operation of capital and product markets. They would help to ensure that such markets are more fully informed regarding the social implications of corporate behaviour and how management addresses those implications, issues about which consumers, shareholders and the public are increasingly concerned.

Notes

1. J. Richard Findlay, "Too Many Boards Still Fail to Grasp Public's Expectations: Corporations Must Consider Society's Needs As Well As Shareholders'" *The Globe and Mail*, January 19, 2000, B13.

2. E.g., A vice-president of the Royal Bank was quoted as saying that contrary to the old belief that the shareholder is king, today's corporation is responsible to a wide variety of groups beyond shareholders—customers, employees, suppliers and even the general public ("Shareholder Activists Out of Line: Banker Says", *The Globe and Mail*, December 8, 1990 at B-3. The increasing currency of such views

was described in L. E. Hebb, "Consider the Other Stakeholders", *The Globe and Mail*, July 2, 1996 at B2.

3. Ontario Municipal Employees Retirement System, one of the largest pension funds in Canada, has a policy of supporting "proposals calling for reasonable information and disclosure on environmental, employment and human rights issues of substantial consequence" (*OMERS Proxy Voting Guidelines* at 31). There are also an increasing number of market participants applying some form of ethical screen to their investment decisions. See for example, "Animal-Friendly Mutual Fund Launched", *The National Post*, August 12, 1999, D-2 reporting on the creation of a new US mutual fund committed to investing only in businesses friendly to animals.
4. C. Forcese, *Owning Up: The Case for Making Corporate Managers More Responsive to Shareholder Values* (Ottawa: Democracy Watch, 1997) at 7.
5. Daniels has stated that the debate over to whom corporate managers are responsible has largely been won by those who assert that shareholders should be the exclusive beneficiaries (R.J. Daniels, "Must Boards Go Overboard? An Economic Analysis of the Effects of Burgeoning Statutory Liability on the Role of Directors in Corporate Governance" (1994) 24 Can. Bus. L.J. 229 at 231). Chapman describes this as an overstatement (B. Chapman, "Corporate Stakeholders, Choice Procedures and Committees"(1995-6) 26 Can. Bus. L. J. 211). The issue was raised in a discussion paper circulated by Industry Canada in connection with its efforts to reform the *Canada Business Corporations Act* (R.S.C. 1985 c. C-34). A proposal by the Canadian Centre for Corporate Ethics and Social Responsibility to amend the federal corporate statute to permit but not require non-shareholder interests to be taken into account in determining the best interests of the corporation was made in 1998. Industry Canada expects to table proposed amendments early in 2000. It is not known at this time if any change in the law regarding management duties will be proposed.
6. The exchange between M. Dodd, in "For Whom Are Corporate Managers Trustees?" (1932) Harvard L. Rev. 1145, and A. Berle, in "For Whom Corporate Managers Are Trustees: A Note" (1932) Harvard. L. Rev. 1365, for example, is often referred to as the starting point of the modern debate.
7. Milton Freedman stated this position with great clarity in "A Friedman Doctrine—The Social Responsibility of a Corporation Is to Increase its Profits", *New York Times*, Sept. 13, 1970 (magazine) at 32. The following are some of the many examples of recent scholarship: O. Hart, "An Economist's View of Fiduciary Duty" (1993) 43 U. of T. L. J. 299; J. R. Macey "Fiduciary Duties as Residual Claims: Obligations to Non-shareholder Stakeholder Constituencies from a Theory of the Firm Perspective" (1999) Cornell L. Rev. 1265; J.R. Macey & G. P. Miller, "Corporate Stakeholders: A Contractual Perspective" (1993) 43 U. of T. L. J. 410; R. Romano, "Metapolitics and Corporate Law Reform" (1984) 36 Stan. L. Rev. 923 at 955.
8. J. W. Singer, "Jobs and Justice: Rethinking the Stakeholder Debate" (1993) 43 U. of T. L.J. 475. Some scholars have made this argument using the same tools of

microeconomic analysis used by advocates of shareholder primacy. *See* for example W.S.W. Leung, "The Inadequacy of Shareholder Primacy: A Proposed Corporate Regime that Recognizes Non-Shareholder Interests" (1997) 30 Columbia J. of L. and Social Problems 587.

9. *See, e.g.*, Ariz. Rev. Stat. Ann. § 10-1202 (West 1996); Conn. Gen. Stat. § 33-756(d) (1995); Fla. Stat. Ch. 607.0830(3) (1997); Ga. Code Ann. § 14-2-202(b)(5) (1994); Haw. Rev. Stat. Ann. § 415-35(b) (Michie 1997); Idaho Code §§ 30-1602, -1702 (1996); 805 Ill. Comp. Stat. 518.85 (West 1996); Ind. Code § 23-1-35-1(d), (F), (G) (1997); Iowa Code § 491.101b (1997); Ky. Rev. Stat. Ann. § 271b.12-210(4) (Michie Supp. 1997); La. Rev. Stat. Ann. § 12-92(g)(2) (West 1994); Me. Rev. Stat. Ann. Tit. 13a, § 716 (West Supp. 1997); Mass. Gen. Laws Ch. 156b, § 65 (West 1996); Minn. Stat. § 302a.251(5) (1996); Miss. Code Ann. § 79-4-8.30(d) (1996); Mo. Rev. Stat. § 351.347(4) (1994); Neb. Rev. Stat. § 21-2095 (1997); N.J. Stat. Ann. § 14a:6-1(2), :6-14(4) (West Supp. 1997); N.M. Stat. Ann. §53-11-35(d) (Michie 1993); N.Y. Bus. Corp. Law § 717(b) (Mckinney Supp. 1998); Ohio Rev. Code Ann. § 1701.59(e) (Banks-Baldwin 1994); Or. Rev. Stat. § 60.357(5) (1997); 15 Pa. Cons. Stat. Ann. § 515-516 (West 1995); R.I. Gen. Laws § 7-5-2-8 (1992); S.D. Codified Laws § 47-33-4 (Michie 1991); Tenn. Code Ann. §48-103-204 (1995); Va. Code Ann. § 13.1-727.1 (Michie 1993); Wis. Stat. Ann. § 180.0827 (West 1995-96); Wyo. Stat. Ann. § 17-16-830(e) (Michie 1997).
10. In some cases, this commitment is reflected in the structural requirements of corporate law, such as the requirement for labour representation on supervisory boards in Germany (*see* Cunningham, "Commonalities and Prescriptions in the Vertical Dimension of Global Corporate Governance" (1999) 84 Cornell L. Rev. 1133 at 1139-1142), others describe a broad conception of the stakeholders to whom management is responsible as part of the ethical/cultural milieu (P. Nobel, "The Social Responsibility of the Corporation" (1999) 84 Cornell L. Rev. 1255 at 1260).
11. Forcese and Rostami provide evidence of the profitability of socially responsible corporate behaviour (Forcese, *supra* note 4 at 10-12 and J. Rostami, "Corporate Social Responsibility: Taking Action to Meet the Challenge" (Ottawa: Conference Board of Canada, 1998) at 2).
12. Bainbridge asserts that the debate over the proper analytical approach is over, noting that even the critics of many of the prescriptions of law and economics analysis use the same tools in their critique (S. M. Bainbridge, "Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship" (1997) 82 Cornell L. Rev. 856 at 859-860).
13. This expression appears to have originated with M. Jensen and W. Meckling, "The Theory of the Firm: Management Behaviour, Agency Costs and Ownership Structure" (1976) 3 J. of Fin. Econ. 305.
14. H.N. Butler & F.S. McChesney, "Why They Give at the Office: Shareholder Welfare and Corporate Philanthropy in the Contractual Theory of the Firm" (1999) Cornell L. Rev. 1195 at 1197 *et seq.*

15. For a discussion of this notion that, *ex ante*, in the nexus of contracts corporation, no stakeholder is privileged and the extent to which this conception of the corporation represents a significant departure from the view that shares were a form of property in the corporation *see* Leung, *supra* note 8 at 593.
16. This well-known example is discussed in O. Hart, *supra* note 7 at 305. Macey & Miller, *supra* note 8, also refer to this situation and argue that the US courts have acknowledged the requirement for creditor interests to be taken into account in complying with the fiduciary duty in such circumstances (at 413). Jacob Ziegel suggests that, unlike other commonwealth jurisdictions, the duty of corporate directors in Canada has not evolved to take into account creditor interests, though the remedy for relief from oppression under Canadian corporate statutes modelled on the *Canada Business Corporations Act* (R.S.C. 1985, c. C-44, s. 241) is increasingly being used to protect creditors leading to a similar functional result (J.S. Ziegel, "Creditors as Corporate Stakeholders: The Quiet Revolution - An Anglo Canadian Perspective" (1993) 43 U. of T. L. J. 511).
17. Leung, *supra* note 7 at 594-595. Some have suggested that the nexus of contracts framework may be reimagined as including not just explicit contracts, but also implicit bargains. From this perspective, the nature of the relationship between stakeholders and the corporation is not simply what they have reflected in their express contracts, but also what is contained in their implicit understandings and expectations regarding the behaviour of the other party. For example, employees may have an implicit understanding that they will accept lower wages in the present in exchange for a promise by management that they will receive additional compensation in the future if they remain with the firm. In theory, implicit contracts provide a basis for arguing in favour of a limited set of commitments of management to non-shareholder stakeholders. *See* J. Coffee, Shareholders versus Managers: The Strain in the Corporate Web" (1986) 85 Mich. L. Rev. 1; "The Uncertain Case for Takeover Reform: An Essay on Stockholders, Stakeholders and Bust-Ups" (1988) Wisconsin L. Rev. 435; "Unstable Coalitions: Corporate Governance as a Multiplayer Game" (1990) 78 Georgetown L. J. 1495. This position is criticized in R. J. Daniels, "Stakeholders and Takeovers: Can Contractarianism Be Compassionate?" (1993) U. of T. L. J. 315 at 331-340. Daniels argues that it is extremely difficult to be confident regarding the operational content to be given to such implicit contracts and to determine to what extent they should be enforced.
18. The nature of creditors' contractual relationship is discussed in Daniels, ibid. at 344-345; Macey & Miller, *supra* note 7 at 417-419.
19. Daniels, ibid. at 345-349; Stone provides a comprehensive critique of the nexus of contracts model as used to limit protection of employees to the terms of their bargains (K.V.W. Stone, "Policing Employment Contracts Within the Nexus of Contracts Firm" (1993) 43 U. of T. L. J. 353). Suppliers who are largely or exclusively dependent upon one corporate customer may be in a similar position to employees. They may have made large investments in anticipation of a continuing long-term relationship which would not be recoverable if the customer was to

change suppliers. This would occur, for example where the supplier produced a specialized input for the corporate customer's operations which no one else would buy. Just like employees, such suppliers may be substantially at risk where they cannot foresee the need to negotiate contractual protection against changes in policy of this kind. As suppliers become more diversified in terms of the customers they sell to, their risk is mitigated. Customers may also be at risk from unanticipated corporate decisions adverse to their interests, such as terminating a product line which would make their investment in the terminated product less valuable. While the scope for bargaining for protection by customers may be small, nevertheless, customers would appear to be less at risk than employees and suppliers. Their level of investment is likely to be smaller. More fundamentally, no corporation can embark on a strategy which is indifferent to its effects on its customers. (*See* Daniels, ibid. at 321-322.)

20. Macey & Miller, *supra* note 7, at 417, argue that workers *can* protect themselves by contracting though they may not in practice.
21. Even advocates of the shareholder-primacy norm acknowledge that the prospects for communities negotiating adequate protection is remote (*e.g.*, Macey & Miller, ibid. at 419-420). They suggest that direct government intervention may be preferable.
22. These types of protection are discussed in J.A. VanDuzer, THE LAW OF PARTNERSHIPS AND CORPORATIONS (Toronto: Irwin Law, 1997) at 190-197.
23. VanDuzer, ibid. at 322-323.
24. R.K. Morck, "On the Economics of Concentrated Ownership" (1996) 26 Can. Bus. L. J. 63 at 69. This high level of concentration is declining for various reasons (*see* R.J. Daniels & P. Halpern, "Too Close for Comfort: The Role of the Closely Held Public Corporation in the Canadian Economy and the Implications for Public Policy" (1996) 26 Can. Bus. L. J. 11 at 46-56).
25. R.J. Daniels & J.G. MacIntosh, "Toward a Distinctive Canadian Corporate Law Regime" (1991) 29 Osgoode Hall L. J. 863 at 885. Morck and Daniels & Halpern both provide evidence that the existence of a controlling shareholder is negatively correlated with corporate performance (Morck, ibid. at 75-80 and Daniels & Halpern, ibid. at 14-28).
26. R. J. Daniels & E. J. Waitzer, "Challenges to the Citadel: A Brief Overview of Recent Trends in Corporate Governance" (1994) 23 Can. Bus. L.J. 23; J. G. MacIntosh, "The Role of Institutional and Retail Shareholders in Canadian Capital Markets" (1993) 31 Osgoode Hall L. J. 371.
27. J.G. MacIntosh, "Institutional Investors and Corporate Governance" (1996) 26 Can. Bus. L. J. 145; J.G. MacIntosh, ibid. MacIntosh refers to investment restrictions, limited monitoring capabilities, fiduciary conflicts of interest, a culture of passivity and other factors as discouraging institutional investor activism. Impediments are also discussed in R. Crête & S. Rousseau, "De la passivité à l'activisme des investisseurs institutionnels au sein des corporations: le reflet de la diversité des facteurs d'influence" (1997) 42 McGill L. J. 3.

28. E.g., *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, ss. 137(4), 149, 150.
29. Such as a shareholder's right to seek relief where the corporation or the directors have acted in a manner which oppresses, unfairly disregards or unfairly prejudices the interests of the shareholder under s. 241 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.
30. Daniels & MacIntosh, *supra* note 25.
31. This evidence is reviewed in Daniels & MacIntosh, ibid. at 872-4.
32. Where there is a separation between those who own the shares of the corporation and those who manage it, there is an incentive for managers to engage in opportunistic behaviour, favouring their own interests over those of shareholders. If managers are shareholders at all, the size of their interest, typically, is very small relative to the aggregate of all shareholder interests and so the proportion of benefit to them associated with acting in ways which further the corporation's interests rather than their own is correspondingly small. Consequently, they may appropriate corporate assets to their own benefit or shirk their responsibilities thereby imposing a loss on shareholders. Any loss they suffer as shareholders is a small fraction of the benefit they receive in their capacity as managers. The costs associated with this kind of behaviour and related costs incurred as a consequence of devoting resources to monitor management to ensure that such behaviour does not occur are referred to as "agency costs". See VanDuzer, *supra* note 22 at 184-190.
33. J. Gordon & L. Kornhauser, "Efficient Markets, Costly Information and Securities Research" (1985) 60 N.Y. Univ. L. R. 76.
34. F. Easterbrook & D. Fischel, "The Proper Role of a Target's Management in Responding to a Tender Offer" (1982) 94 Harvard L. Rev. 1161. Other commentators, however, suggest that hostile takeovers suffer from high transactions costs and may be misdirected as a consequence of which directors need to be able to take defensive measures in some circumstances (*e.g.* Morck, *supra* 24 note at 65).
35. B.R. Cheffins, COMPANY LAW: THEORY, STRUCTURE AND OPERATION (Oxford: Clarendon, 1997) at 117-8; E. Fama, "Agency Problems and the Theory of the Firm" (1980) 88 J. of Pol. Econ. 288.
36. Cheffins, ibid. at 118. The requirement for firms to seek funds in capital markets with the attendant disclosure regarding corporate operations and the scrutiny of investors will also tend to ensure that management focuses on maximizing shareholder value.
37. E.g., F. Easterbrook & D. Fischel, "Corporate Control Transactions" (1982) 91 Yale L.J. 698 at 700-73.
38. E.g., V. Brudney, "Corporate Governance, Agency Costs, and the Rhetoric of Contract" (1985) 85 Columbia L. Rev. 1403 at 1410-1411.
39. J.G. MacIntosh, "Designing an Efficient Fiduciary Law" (1993) 43 U. of T. L. J. 425 at 456. For a demonstration of this point based on a theory of organizational

economics *see* E. Neave, "Organizational Economics and Directors' Control" (1996) Can. Bus. L. J. 106.

40. Daniels, *supra* note 5. Several commentators have pointed out that even if management duties ran exclusively to shareholders, the standard of accountability is not straightforward. This is obviously the case when the corporation has different classes of shares with different characteristics, but arises in all situations where the interests of shareholders are not uniform (*e.g.*, Macey & Miller, *supra* note 7 at 416). MacIntosh suggests that it is more likely that shareholders will agree on their goals than other stakeholders (MacIntosh, ibid. at 455).
41. Macey & Miller, ibid., at 412-413.
42. J. R. Macey, "Transcript: Corporate Social Responsibility: Paradigm or Paradox" (1999) 84 Cornell L. Rev. 1282 at 1348.
43. Ibid.
44. E.g., MacIntosh, *supra* note 39 at 442-444.
45. *Teck Corporation Limited* v. *Millar* (1972), 33 D.L.R. (3d) 288 (B.C.S.C.) at 314: A classical theory that once was unchallengeable must yield to the facts of modern life. In fact, of course, it has. If today directors of a company were to consider the interests of its employees no one would argue that in doing so they were not acting *bona fide* in the interests of the company itself. Similarly, if the directors were to consider the consequences to the community of any policy that the company intended to pursue, and were deflected in their commitment to that policy as a result, it could not be said that they had not considered *bona fide* the interests of the shareholders.

    See to similar effect *Miles* v. *Sydney Meat-Preserving Co. Ltd* (1913), 16 C.L.R. 50 (H.C.Aust.) aff'd (1914) 17 C.L.R. (P.C.) at 64.
46. See *Report of the Industrial Inquiry Commission on Canadian National Railways "Run-Throughs"* (Ottawa: Queen's Printer, 1965).
47. The so-called business judgement was formally adopted in Ontario in the recent case of *CW Holdings Inc.* v. *WIC International Communications Inc.*, [1998] O.J. No. 1886 (QL). Under this rule courts will not substitute their business judgement for that of the corporation's managers so long as the managers' decision was made honestly and in a reasonable manner.
48. MacIntosh, *supra* note 39 at 471; B. Chapman, "Trust, Economic Rationality and Corporate Governance" (1993) 43 U. of T. L. J. 547; R. Romano, "Comment: What Is the Value of Other Constituency Statutes to Shareholders?" (1993) 43 U. of T. L. J. 533.
49. Romano, ibid. at 533.
50. *See supra* note 4.
51. Macey & Miller, *supra* note 7 at 420; MacIntosh, *supra* note 42 at 453-435.
52. This is true despite the problems with political action suggested by public choice theory (MacIntosh, ibid. at 454). Given that we currently have a shareholder primacy rule, there would be some transitional issues as well in moving to a rule making management accountable to all stakeholders. Some US commentators have gone so far as to suggest that changing the beneficiaries of corporate

accountability is an unconstitutional taking (e.g., L.J. Oswald, "Shareholders and Stakeholders: Evaluating Corporate Constituency Statutes Under the Takings Clause" [1998] J. of Corporation L. 1).

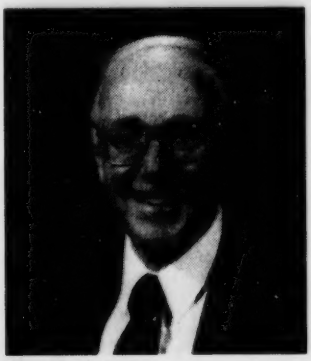
53. E.g., *Canada Business Corporations Act* (R.S.C. 1985, c. C-44) ss. 137, 103(5) (to make or amend bylaws) 175(1)(to amend articles). The provinces of Quebec, Nova Scotia and Prince Edward Island do not permit shareholder proposals. British Columbia's new *Company Act* (S.B.C. c. 27) has the most shareholder friendly proposal rules in Canada (Division 7). These provisions are not yet in force.
54. The Noranda proposal is described by C. McCall in "Update on Shareholder Proposals in Canada" (1997) 9 Corporate Governance Rev. 5 at 7. McCall indicates that there are now awards for such reporting. See generally Neave on the need for a continuing source of fresh ideas to management (*supra* note 42 at 106).
55. The Placer Dome proposal is described by M.C. Jantzi in "Canadian Shareholder Proposals: A Tool for Change" (1997) 9 Corporate Governance Rev. 1 at 1.
56. The Alcan proposal is described by B. Davis in "Canada's Successful Activists, the Churches" (1994) 6 Corporate Governance Rev. 1 at 2. An earlier proposal was made at Alcan's 1982 annual meeting requesting the corporation to establish a committee of the board to report to shareholders on the relationship between the corporation and the military in South Africa. It received 8.8% of the vote.
57. The proposal mechanism was introduced into Canadian law with the *Canada Business Corporations Act* (S.C. 1974-5, c. 33; now R.S.C. 1985, c. c-44). The study on which the new act was based describes the purpose of the shareholder proposal as to "provide shareholders with machinery that enables them to communicate with co-owners on matters of common concern relating to the affairs of the corporation" (R. Dickerson, J. Howard & L. Getz, PROPOSALS FOR A NEW BUSINESS CORPORATIONS LAW IN CANADA, volume 1 (Ottawa: Information Canada, 1971) at 95).
58. (1987), 59 O.R. (2d) 459 (H.C.J.), aff'd (1987), 60 O.R. (2d) 640 (C.A.).
59. Under the *Canada Business Corporations Act* (R.S.C. 1985, c. C-44, s. 137(5)) the corporation does not have to circulate a proposal in five (5) circumstances: (i) the proposal is not received at least ninety days before the anniversary date of the last annual meeting; (ii) it clearly appears that the proposal is primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation, the directors, officers or security holders, or *promoting general economic, political, racial, religious, social or similar causes*; (iii) the proposing shareholder made a proposal within the last two (2) years then failed to show up, in person or by proxy, to speak to it at the meeting; (iv) substantially the same proposal was submitted to a meeting of shareholders and defeated within the last two (2) years; or (v) the right to make a proposal is being abused to secure publicity. Under the Ontario *Business Corporations Act* (R.S.O. 1990, c. B.16, s. 99(5)(b)) there is no social cause exclusion. Instead, proposals may be excluded if they do not relate in any significant way to the business or affairs of the corporation.

60. (1984), 24 A.C.W.S. (2d) 176 (H.C.J.), aff'd (1984), 25 A.C.W.S. (2d) 149 (C.A.).
61. [1996] S.C.R. 550.
62. Ibid.
63. *Michaud* v. *Banque Nationale du Canada*, [1997] R.J.Q. 547 (S.C.).
64. One study found that in 1998, there were eight (8) shareholder proposals made by shareholders in 264 of the 294 corporations comprising The Toronto Stock Exchange 300 which were subject of the study and none related to social issues (D.S. Gauris, "1998 Proxy Season Review" (1998) 10 Corporate Governance Rev. 6).
65. In 1991, for example, 300 US shareholder proposals related to social issues while in the same year in Canada, there were none (C. McCall & R. Wilson, "Shareholder Proposals: Why Not in Canada? (1993) 5 Corporate Governance Rev. 12 at 12 citing the Investor Responsibility Research Center).
66. Kazanjian gives several examples (J. Kazanjian, "Canadian Shareholder Proposals" (1997) 9 Corporate Governance Rev. 1 at 3).
67. *See* generally, M. Curzan & M. Pelesh, "Revitalizing Corporate Democracy: Control of Investment Managers' Voting on Social Responsibility Proxy Issues" (1980) 93 Harvard L. Rev. 670 at 675.
68. 17 CFR (Code of Federal Regulations) § 240.14a-8 (1999).
69. B.R. Cheffins, "*Michaud* v. *National Bank of Canada* and Canadian Corporate Governance: A Victory for Shareholder Rights?" (1998) 30 Can. Bus. L. J. 20 at 40; K.W. Waite, "The Ordinary Business Operations Exception to the Shareholder Proposal Rule: A Return to Predictability" (1995) 64 Fordham L. Rev. 1253 at 1268-1270. C.L. Ayotte, "Reevaluating the Shareholder Proposal Rule in the Wake of *Crackerbarrel* and the Era of Institutional Investors" (1999) 48 Catholic Univ. L. Rev. 510. For a thorough discussion of the differences between the Canadian and US systems *see* R. Crête, THE PROXY SYSTEM IN CANADIAN CORPORATIONS — A CRITICAL ANALYSIS (Montréal: Wilson & Lafleur, Martel, 1986) at 187 *et seq.*
70. A line of judicial decisions requiring corporations to circulate proposals relating to social responsibility, sometimes contrary to SEC rulings, is discussed in Forcese, *supra* note 3 at 34-38.
71. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, 63 Fed. Reg. 29106 (1998), now codified at 17 C.F.R. § 240.14a-8 (1999). The amendment is discussed in Ayotte, *supra* note 67 at 551-553.
72. This process is described in Cheffins, *supra* note 69 at 38-41.
73. E.g., *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, ss. 147, 150.
74. Industry Canada, *Canada Business Corporations Act Discussion Paper: Shareholder Communications and Proxy Solicitation* (Ottawa: Industry Canada, 1995) at 69.
75. This aspect of the proxy rules has been criticized by Anisman (P. Anisman, "The Commission as Protector of Minority Shareholders" in Law Society of Upper Canada Special Lectures, SECURITIES LAW IN THE MODERN MARKETPLACE (Toronto: Law Society of Upper Canada, 1989)). Industry Canada proposed an

amendment to create an exemption from proxy solicitation similar to the US exemption where "the person communicating is not seeking proxy authority and does not have a material interest in the matter subject to a vote nor is otherwise ineligible for the exemption" (Industry Canada, ibid., at 32).

76. McCall & Wilson, *supra* note 65 at 14.
77. SEC Rule 14a-29(b)(1). Several other problems have been identified with the Canadian rules. As noted, the Supreme Court of Canada held in *Verdun*, *supra* note 61 that only registered shareholders were entitled to submit proposals. This raises practical difficulties given the existing practice for large numbers of shareholders never to become registered. Industry Canada has proposed removing this restriction which does not exist under US law. Another issue is the extent to which proposals may be excluded on the ground that a similar proposal was made previously. Here again US law is more accommodating than Canadian law. Under US law only proposals which are virtually identical may be excluded and only if certain levels of approval were not received the first time the proposal was considered (3% for the first submission, 6% for the second and 10% for any subsequent submission). Under Canadian law any proposal substantially similar to a previous proposal which was presented and defeated within two (2) years may be excluded. This basis for exclusion was applied in *Greenpeace*, *supra* note 60.
78. Kazanjian, *supra* note 66 at 3.
79. Jantzi, *supra* note 55 at 4. Cheffins, *supra* note 69 suggests various reasons for a likely lack of interest by institutional shareholders in initiating or supporting shareholder proposals (at 47-61).
80. McCall & Wilson, *supra* note 65 at 13.
81. Some commentators have recommended that proposals have binding effect (e.g., Forcese, *supra* note 4 at 38. Under the *Business Corporations Act of Ontario* (R.S.O. 1990, c. B.16) proposals to amend bylaws are binding (s. 116(5)).
82. Recent amendments to the British Columbia *Companies Act* will put in place a regime for shareholder proposals which allows shareholder proposals in a broader range of circumstances than the US regime (S.B.C. 1999, c. 94, Division 7, not yet in force).
83. Listing Rules 472 to 475 and TSE bylaw s. 19.17 were changed. The impetus for the changes were the recommendations contained in *Where Were the Directors* (Toronto: The Toronto Stock Exchange, 1994) (the "*Dey Report*"). These recommendations drew from the earlier *Report of the Committee on Corporate Governance* (London, Gee, 1992)(the "*Cadbury Report*"). The Montreal Exchange has adopted a policy on substantially the same terms as the TSE rules.
84. G. Khoury, J. Rostami and P.L. Turnbull, *Corporate Social Responsibility: Turning Words into Action*" (Ottawa: Conference Board of Canada, 1999).
85. This has been a problem with respect to the reporting under the TSE rules (D. W. Binet, "TSE Corporate Governance Rules: One Year Later" (Federated Press) paper presented at the 2nd Annual Corporate Summit, Toronto, December 3-5, 1996).

86. One of the significant concerns expressed regarding the new TSE rules was their applicability to smaller public corporations (C. Hansell "Corporate Governance Disclosure in Canada: Background and Compliance" in L. Sarna, ed., CORPORATE STRUCTURE, FINANCE AND OPERATIONS: ESSAYS ON THE LAW AND BUSINESS PRACTICE, vol. 9 (Scarborough: Carswell, 1996) 29 at 49-50).
87. Adrian Cadbury described the initiatives in the Cadbury Report (*supra* note 83) which adopt an approach similar to the TSE rules as "relying primarily on what can best be described as market regulation to bring about compliance" (from an address to the Association of Certified Accountants, as quoted by Alice Belcher in "Regulation by the Market: The Case of the Cadbury Code and Compliance Statement" (1995) J. of Business L. 321, and cited in Hansell, ibid.at 50.
88. Anecdotal evidence is referred to in Cheffins, *supra* note 69 at 62 and Hansell, ibid.. The recently published report on the effect of the TSE Rules, *Report on Governance: Five Years to the Dey* (Toronto: Institute of Corporate Directors and The Toronto Stock Exchange, 1999), found varying degrees of compliance with the benchmarks but suggested that progress was being made.
89. M. Gillen, SECURITIES REGULATION IN CANADA, 2nd ed. (Toronto: Carswell, 1998) reviews the literature on this issue and concludes that empirical evidence has not resolved the question of whether mandatory disclosure is beneficial and argues that further research is needed (at 308-321).
90. The weaknesses of Canadian requirements regarding environmental disclosure compared to US requirements are discussed in Forcese, *supra* note 4 at 22-33.
91. Forcese cites research showing that roughly 75-80% of large public corporations in the US have some type of corporate code but a 1992 survey of 461 Canadian firms in the *Financial Post 500* revealed that of the 225 responding, only 75 considered themselves to have "fairly well-developed codes of ethics" (C. Forcese, *Putting Conscience into Commerce?* (Montreal: Int'l Centre for Human Rights and Democratic Development, 1997)). A more recent study reported in *Maclean's* found that roughly 50% of the 43 firms surveyed had implemented corporate codes ("Misbehaving Abroad" *Maclean's*, May 26, 1997).
92. E.g., B. Chapman *supra* note 5, describing how a system of stakeholder participation through director's committees could be used to enhance accountability to stakeholders without the indeterminacy associated with a duty to be accountable to all stakeholders.



Alan C. Cairns

Alan C. Cairns, FRSC

The End of Internal Empire: The Emerging Aboriginal Policy Agenda

Abstract

The historic move from wardship and the policy of assimilation to Aboriginal nationalism, a prospective third order of Aboriginal government and cultural renewal, is the domestic Canadian version of the rise and fall of the European empires, resulting in an explosion of newly independent states. The end of the Canadian version, however, does not result in independence. The necessary policy, therefore, is one which seeks a rapprochement between Aboriginal and non-Aboriginal peoples in Canada. They have to learn how to live together and share a common polity. This must occur in two separate settings. The weakness of present policy is its one-sided concentration on self-government and its failure to address the situation of more than half of the Aboriginal population in urban centres.

The necessary focus on self-government for land-based communities needs to be supplemented by policies to encourage the positive adaptation of Aboriginal peoples to the urban environment. The present policy of drift is leading us to a Canadian version of the American big city reality of an Afro-American middle class and Afro-American ghettos—in our case an emerging Aboriginal middle class, fed by dramatic increases in post-secondary enrolment and graduation,

coexisting with the poor, marginalized, alienated and overwhelmingly youthful Aboriginal population in the inner core of major cities.

This paper identifies the sources of the one-sided nature of existing policy and the urgent need for a more balanced policy to address urban realities.

Résumé

Le passage historique de la tutelle et de la politique d'assimilation au nationalisme autochtone, à la potentialité d'un troisième ordre de gouvernement autochtone et au renouveau culturel est la version canadienne interne de la montée et de la chute des empires européens qui ont résulté en une explosion du nombre des nouveaux états indépendants. Le dénouement, dans la version canadienne, ne débouche cependant pas sur l'indépendance. Par conséquent, la politique obligée est celle qui tente un rapprochement entre populations autochtones et non autochtones au Canada. Toutes deux doivent apprendre à vivre ensemble et à partager une politique commune. Cela doit survenir dans deux contextes distincts.

La faiblesse de la politique actuelle tient à ce qu'elle représente une concentration sur une autonomie gouvernementale qui ne règle en rien la situation de plus de la moitié de la population autochtone vivant en milieu urbain.

L'insistance sur l'autonomie gouvernementale des communautés vivant sur des terres doit s'assortir de politiques complémentaires destinées à encourager une adaptation positive des peuples autochtones à l'environnement urbain. L'actuelle politique de dérive nous conduit à une version canadienne de la réalité américaine des mégalopoles ayant leur classe moyenne noire et leurs ghettos noirs, une nouvelle classe moyenne autochtone confortée par une augmentation exponentielle des inscriptions et des diplômes dans les établissements d'enseignement post-secondaire coexistant avec une population très majoritairement composée de jeunes autochtones pauvres, marginalisés et aliénés dans le centre des grandes villes.

Cette communication identifie les sources du caractère partiel de l'actuelle politique et la nécessité impérieuse d'une politique plus équilibrée pour remédier aux réalités du monde urbain.

My task in this short paper is to portray the big picture of where we have come from and where we are in the contentious policy area of Aboriginal/non-Aboriginal relations. I do so in the hope that such understanding will position us to make better future choices than the past choices which have led to our present troubled situation. This is not a policy area for the incautious and the unwary. Uncertainty, ambiguity, the ruinous consequences of past policy, rapid change, the voice appropriation thesis, and the language of nationalism all contribute to the highly politicized discourse that attends policy discussion

We may be helped if we can stand back from the mini-crises featured almost daily in the press. A helpful vantage point is provided by recognizing some of the parallels between the rise and the ending of the European empires in Africa and Asia and the parallel rise and demise of the domestic version of empire embedded in the history of Aboriginal/non-Aboriginal relations in Canada—from wardship to Aboriginal nationalism. The parallels are instructive, although clearly imperfect, especially in the contrast between the independence of former overseas colonies and the much lesser jurisdictions available to Aboriginal nations within Canada. Nevertheless, the imperial analogy reminds us that in responding to Aboriginal nationalism we are reacting to and are carried along by the same global currents that led to the emergence of dozens of new states positioned on the ruins of empire.

No one anticipated the rapid ending of the globe-straddling European empires in the decades following World War II. The United Nations General Assembly 1960 Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, which summed up the new moral climate, stated that "all peoples have the right to self-determination [and] ...inadequacy of political, economic, social and educational preparedness should never serve as a pretext for delaying independence." (The General Assembly vote was 89-0, with nine abstentions.) Such a resolution would have been inconceivable to the imperial elites governing subject peoples as a trust between the two world wars. They saw themselves playing a tutelary role as "advanced nations," with, in League of Nations language, responsibility over "peoples not yet able to stand by themselves under the strenuous conditions of the modern world."(Jackson 1993: 121, 124)). The non-

Aboriginal majority in Canada was no less taken by surprise by the emergence of Aboriginal nationalism than were the imperial powers by the emergence of the colonial nationalism that eroded their hegemony.

Thirty years ago, neither academic specialists in Indian issues, nor policy-makers and administrators who governed Indian peoples in Canada as wards in an internal colony could have anticipated even an approximation of the contemporary challenges in the Aboriginal policy area. In 1969 the federal government White Paper on Indian policy was unabashedly assimilationist. Its guiding premise was that the separate administrative and policy regime which kept Indians apart from the majority society also kept them in poverty and was responsible for the malaise of Indian communities. Accordingly, the dismantling of the historic impediments that isolated Indians from the mainstream was the recipe for their advance to full and successful membership in contemporary Canadian society. Thirty years prior to the White Paper, the academic and official participants at a Yale/University of Toronto conference on Aboriginal policy in Canada and the United States were virtually unanimous in their belief that assimilation was the desired goal of Indian policy, and in any event was inevitable. (Loram and McIlwraith 1943) Nor should we forget that, prior to the White Paper, the Saskatchewan CCF social democratic government of Tommy Douglas and Woodrow Lloyd (1944-1964) was a passionate advocate of assimilation, occasionally less aggressively reworded as integration. (Pitsula 1994) Past supporters of assimilation, we should remember, were located on the progressive end of the political spectrum.

To look back usefully reminds us of the uncertainties and ambiguities that frustrate our attempts to predict the future, and confidently to manoeuver purposefully toward cherished goals. We should not, therefore, arrogantly and easily assume that our generation has the answers that have eluded our predecessors. Even to think clearly is an achievement in this troubled, politicized policy area. Nevertheless, the uncertainties that dog our efforts may be reduced—and thus policy errors diminished—if we can realistically, if only approximately, portray the major challenges confronting us.

Where we now are in Aboriginal/non-Aboriginal relations is the ending of the domestic Canadian version of empire in which Aboriginal

peoples were marginalized and status Indians, always the focal point of federal Aboriginal policy, were subjected to a state-administered cultural assault to eradicate Indianness. The demise of domestic empire now playing itself out in Canada, similar to the demise of overseas empire, is messy. Wardship status leaves a legacy of resentment and bitterness in the formerly subject peoples. Further, only rarely is it the schooling for independence that imperialists commonly assert justifies their rule. Thus the overseas results of the end of empire, if we look around, are mixed. The realities of independence, on occasion, are far worse than the realities of imperialism which were to be jettisoned on the rubbish heap of history.

We should not assume, accordingly, that self-government will be an unblemished series of success stories by small Aboriginal nations. (Barsh 1993) The conditions for its exercise are too often far from supportive. The malaise and anomie that self-government is to overcome may instead impair its successful exercise. Even Nunavut, the most ambitious example we are likely to see, faces enormous and intimidating challenges.

The process of ending domestic empire in Canada was triggered by the emergence of Aboriginal nationalism. "Nation" as a description of Aboriginal peoples was virtually unheard of in the post-war parliamentary inquiries into Indian affairs. It was absent from the Hawthorn report of the mid-sixties which postulated a permanent presence of Indian communities in Canada. (Hawthorn 1966 and 1967.)That report, however, saw small struggling villages, not nations, as the community base of Indian life. "Nation", by definition, featured neither in the internal policy discussions that led to the 1969 White Paper, nor in the White Paper's analysis. The language of nation and of nationalism was also absent from two major publications of the Indian- Eskimo Association in 1970 and 1972, which inaugurated the modern era of Aboriginal rights in Canada, and anticipated the leading role of the legal profession in supporting Aboriginal peoples. (Indian-Eskimo Association of Canada 1970; and Cumming and Mickenberg 1972) Finally, even the successful attack on the 1969 White Paper led by the Indian Association of Alberta, did not employ the language of nationalism. Its major document of rebuttal was called "Citizens Plus." (Indian Chiefs of Alberta 1970) The

spirit of the times thirty or forty years ago, if we may sum it up, was close to the antithesis of where we are now.

History has changed direction. We are in the midst of a significant transformation, the most obvious component of which is the emergence of a large number of small self-governing Aboriginal nations, the response to Aboriginal nationalism. These nations are the social base of Aboriginal governments which are to be the instruments for cultural renewal. The move to nation-based self-government is a response to the community base of Aboriginal identity and culture on Indian reserves, on Metis settlements in northern Alberta, and in Nunavut with its Inuit majority. Nation and self-government derive much of their momentum from the transformed domestic political/intellectual climate, which has spilled over from the international arena, and is hostile to alien rule. In any case, wardship, tutelage and internal colonialism are repudiated by the undeniable failure of past policies.

Self-government is neither a planned outcome with roots deep in the past, nor a laboratory experiment, but a happening that has taken us by surprise. Accordingly, the inherited intellectual capital structured around the goal of assimilation is obsolete. This is only one of the several reasons for the hesitancy that attends the Aboriginal policy area. I say this in full recognition that the recent five-volume Report of the Royal Commission on Aboriginal Peoples (RCAP)—some 3500 plus pages—was established to chart a future course that would redress the injustices of the past and pave the way to a rapprochement between the Aboriginal and non-Aboriginal peoples of Canada. (Canada, 5 vols. 1996) Although I fault the Report for failing to provide a viable constitutional vision (see below), it nevertheless provides Canadians with crucial features of the big picture of where we are. It is a document of Aboriginal nationalism. "Nation," it repeats on page after page, is the central reality of the Aboriginal future to which Canadians must respond positively. It is "through the nation—the traditional historical unit of self-governing power, recognized as such by imperial and later Canadian governments in the treaty-making process—and through nation-to-nation relationships, that Aboriginal people must recover and express their personal and collective autonomy." (RCAP 1996, vol. 1, 610) The Report proposes sixty to eighty Aboriginal nations wielding significant

powers as the members of a newly constitutionalized third order of Aboriginal government. These nation governments are to be the vehicles for the protection and nourishment of Aboriginal cultures and identities.

RCAP's use of nation was not idiosyncratic. It was the culmination of a developing discourse whose roots lie, at least in part, in the opening up of the constitution in response to the vigour of Quebec nationalism underlined by the Parti Québécois (PQ) election victory in 1976. The lesson learned from the PQ was that challenges to the status quo had a special élan and momentum if dressed up in the language of nationalism. Further, nation is dignifying and status-enhancing for those who employ it. "Nation" also rested on the thesis that indigenous peoples in countries with majority settler populations were "victims of colonialism"—a phrase which features prominently in RCAP's analysis. Given the leading role of nationalism in the overthrow of European empires, it was almost inevitable that indigenous people seeking the overthrow of internal empires should describe themselves as nations, and that their non-Aboriginal supporters should subscribe to that definition. Thus the 1983 Penner Report, with its ringing advocacy of self-government for status Indians, systematically employed "nation" in its analysis and recommendations—partly as a response to the Indian presentations before the House of Commons (Penner) committee,—and also to educate Canadians in the new reality. (Canada 1983) Possibly the most striking evidence of the change in self-definition is the remarkable diffusion of "nation" at the local level of Indian bands. Approximately one-third of Indian bands have officially added "nation" to their name—a development largely of the last decade. (Canada 1985, 1990, 1999)

"Nation" is a powerful word, heavy with historic meanings. When "nation" replaced "ward" as the appropriate label for Indian peoples, and was also adopted by the Inuit and Metis, the old order, the "imperial order" one might say, crumbled as its former justifications seemed to speak for a departed world. When "nation" spreads through indigenous populations living in the midst of non-Aboriginal majorities, as in Canada, it changes the task confronting policy-makers. They can no longer assume the steady movement of more and more individuals into the majority society as the vehicle for the erosion of Aboriginal difference. Instead, the presence of distinct Aboriginal communities

employing the language of nationalism must be understood as a reality for any foreseeable future. One crucial long-run task for Canadians and their governments, therefore, is the accommodation of Aboriginal nations within a transformed institutional and possibly constitutional framework.

Unlike overseas empire which ends with the departure of the former imperial rulers and the handover of power to an indigenous elite, the end of domestic empire requires a rapprochement between the majority, which remains in place, and Aboriginal nations. Thus the end of internal domestic empire is far from being a precise counterpart to the ending of the overseas European empires and the emergence of many newly independent states. When overseas empire ends, the formerly colonized people take over the reins of a new state and henceforth meet their former overlords in the formal equality of states interacting with each other in the international system. No such clean break is available as a goal for indigenous peoples in Canada when domestic empire crumbles.

The end of internal empire, accordingly, is attended by special complications. Yesterday's imperialists do not depart, but remain as a massive majority. The end of official stigmatization and wardship of indigenous peoples does not lead to independence. Although there is scattered evidence of independence thinking among indigenous peoples in Canada, the pervasive assumption—perhaps sometimes reluctantly held—is that Aboriginal governments will operate within Canada. Further realities follow: that federal and provincial governments will continue to be important as providers of services to the members of self-governing Aboriginal nations. Accordingly, Aboriginal governments will be part of a larger system of governments; Aboriginal nations will be part of the Canadian nation, and individual members of Aboriginal nations will still be residents of individual provinces and territories and will be citizens of Canada, part of the coast-to-coast community of Canadian citizens. These may appear to be platitudes, and in one way, they are. In another way, however, they are not, for they are frequently ignored. Internal nations are not naturally attracted to the divided civic identities of federalism. Nationalism seeks to get out—to achieve maximum autonomy. The ongoing connection with the majority society—the agent of its former subjugation—tends to be seen as a regrettable

necessity—not as an instrument of solidarity. Thus RCAP passionately and repeatedly underlines the nationhood of Aboriginal peoples, but gives only scattered and half-hearted support to Canadian citizenship.

Indeed, here and elsewhere, the language of Aboriginal nationalism marginalizes the language of Canadian citizenship. This is true of the 1983 Penner Report on Indian self-government, of much academic analysis, and of the two-row wampum approach which postulates separate societies coexisting side-by-side. If these assessments of where we are headed acquire momentum, they will weaken the bonds of empathy and solidarity which support our feelings of responsibility for each other. The nationalist assertion that "We are not you," may subtly lead the majority to agree and to act on the basis that "They are not us." This would have disastrous consequences for the citizens of Aboriginal nations whose governments will lack meaningful governing capacity in the absence of massive, long-lasting flows of resources from the non-Aboriginal majority.

The governing task, therefore, is to work out a new relationship of mutuality between the formerly colonized and a majority that must relax its grip and accord national communities of Aboriginal peoples some measure of the differentiated citizenship that is implicit in their desire for national recognition. We need to develop a meeting ground between Aboriginal nations and Canadian citizenship. This requires non-Aboriginal Canadians to accept and support the presence of many small Aboriginal nations in their midst. It equally requires Aboriginal Canadians to see their nationhood and Canadian citizenship as complementary, rather than antagonistic.

The pursuit of this goal requires unremitting attention to two realities. 1) Aboriginal nations are small. If individual Indian bands constitute the majority of self-governing nations, average size will be under 1,000. If the process of aggregation and combination to re-establish historical Aboriginal nations occurs, as proposed by RCAP, sixty to eighty nations will emerge, but their average size will be only 5,000 to 7,000, with a lower limit of 2,000. Small size immediately raises unavoidable questions about governing capacity, about the extent and nature of the jurisdictions that can confidently and competently be assumed. Small size necessarily means that federal and provincial

governments will continue to play crucially important roles in the lives of the members of self-governing nations. Self-government, in sum, is not enough. It encompasses only part of the Aboriginal future. This needs to be emphasized or we will misunderstand where we are.

2) For any foreseeable future, the ability of Aboriginal governments to finance their responsibilities from their own resources will be rare. In the vast majority of cases, they will be massively dependent on external funding, primarily from Ottawa. (Prince and Abele 1999) Support for the requisite degree of funding over the long haul requires a high degree of empathy from the majority society. The standard source for this is an encompassing citizenship which, in modern democracies, is the basis for feelings of solidarity, for the recognition that the flow of funds and resources to the disadvantaged takes place within a "we" group. Remarkably, but revealingly, the RCAP Report does not justify equalization for Aboriginal governments on the basis of a shared Canadian citizenship, but on the much weaker rationale that the "Canadian economy is a shared enterprise." ((RCAP 1996, vol. 1, 688) This is not good enough. Appropriate policy for self-governing Aboriginal nations, accordingly, must balance a positive recognition of difference, while simultaneously reinforcing, for both Aboriginal and non-Aboriginal peoples, the image and reality of the Canadian citizenship of the former. If there is only difference, we approach each other as strangers between whom there are few moral bonds.

This recognition was lost on the authors of the RCAP Report, or at best was only dimly understood. The Report, on its own admission, paid little attention to the sharing, Canadian dimension of federalism. Its organizing focus was the Aboriginal nation; the maximization of Aboriginal governing autonomy was its institutional goal; Aboriginal participation in the central government was to be by "nation" in a newly introduced third chamber, whose main task would be to protect and enhance Aboriginal interests; there is negligible indication that the members of this Aboriginal third chamber are to see themselves as participants in Canadian endeavors—as assessing policies that extend beyond explicit Aboriginal concerns; in general, Canadian citizenship received minimal attention and references to it were lukewarm. The RCAP Report, therefore, in spite of its massive length and the massive

research that buttressed it—making it perhaps the most comprehensive analysis of a minority indigenous population ever undertaken—is inadequate to serve as a comprehensive recipe for the future relationship between Aboriginal and non-Aboriginal people in Canada. It failed to put Aboriginal nations and the sixty to eighty Aboriginal governments it proposed to serve them into a realistic Canadian context.

The policy focus on nation must also come to grips with Will Kymlicka's thesis in *Finding Our Way*. He asserts that "to maintain a separate societal culture in a modern state is an immensely ambitious and arduous project." (Kymlicka 1998, 31)[1] He goes on to discuss the difficult challenge such a goal poses even for Québécois with a large population—1,000 times greater than RCAP suggests for the average Aboriginal nation—a modern bureaucracy and the jurisdiction of a province at their disposal, powers that sovereigntists nevertheless consider inadequate. It is implicit in his analysis that the degree of separate cultural maintenance that is possible for small Aboriginal nations is severely limited. This is especially so when they do not fashion themselves on the Amish or the Hutterites that seek to distance themselves from the majority society. In contrast, they seek the material and other benefits available to the majority.

Kymlicka's thesis should not be interpreted as a dismissal of self-government, but only as a cautionary note that its virtues and possible achievements should not be exaggerated. That note of caution is reinforced by the knowledge that many Aboriginal nations are anomic, faction-ridden and have limited expertise as well having small populations. The social conditions for the exercise of self-government are often inauspicious. Nevertheless, wardship and tutelage cannot be revived. There is no turning back. Self-government will provide those who practise it with skill and ingenuity with at least a limited capacity to exercise some leverage over the inrushing forces from the external environment, both domestic and international. That is justification enough.

If you have followed my analysis thus far you can be forgiven for thinking that the accommodation of territorially-bounded Aboriginal national communities in an emerging third order of government is the prime task confronting Aboriginal policy-makers . Or you might be tempted to see the Canada of the future as a multinational enterprise of

upwards of a hundred or more self-governing nations. Putting these two interpretations together leads to the thesis that we are incrementally moving toward a multinational Canada. However, that conclusion, if such it is, takes us only part of the way toward a comprehensive understanding of our future. It assumes there is only one goal shaped by the linking of the powerful language of nation to the inherent right of self-government. This the focus of most of the academic literature.

This bias in our perceptions, in the focus of government policy, in the subject matter of academic articles, and in what might be called the "Zeitgeist", cumulatively reinforces a myopic vision that leaves out half of the Aboriginal population that lives in urban centres. The rhetoric of nation and self-government too easily leads to the false belief that nation self-government is *the* Aboriginal road to the future. By concentrating on one road to the future, the dominant mindset deflects our attention from the second road, the urban road, the road of past and future migration, the urban context where the interaction between Aboriginal and non-Aboriginal peoples is most intense. Here too, the end of the European overseas empires is relevant. It typically involved the independence of the formerly colonized *and* the migration of many of the formerly subject peoples to the metropoles of the former motherland. France in Algeria is succeeded by Algerian independence and a growing Algerian presence in France. Britain in India is succeeded by Indian independence and the emergence of several million Indians in the United Kingdom.

Although no Aboriginal nation will follow Algeria or India to independence, the parallel still exists of on the one hand the attainment of greater autonomy by Aboriginal nations, and on the other the emergence of a large urban Aboriginal population which has already greatly modified the demography of major cities, especially in western Canada. These two developments are both crucial steps which will shape Aboriginal and non-Aboriginal relations for the next generation—one by the emergence of self-governing pockets of Aboriginal nations scattered throughout the Canadian land space, and the other, urbanization, by facilitating the more intense interactions, including intermarriage, that proximity encourages. Both require the sustained attention of policy-makers. This requirement is not being met.

The Twofold Aboriginal Policy Agenda

We are, therefore, confronted by two irresistible developments, not one. First, and most prominent, is the end of wardship and the move to self-government resting on the inherent right to self-government, of which the new quasi-province of Nunavut is the most striking example. Self-government is the prime focus of public policy and public discussion directed to the future of Aboriginal peoples within Canada. Simultaneously, however, there is a large urban Aboriginal population—the second policy challenge, which deserves but has not received equal attention. Estimates of the percentage of Aboriginal people living in urban centres vary, but figures hovering around fifty per cent are commonly cited—disproportionately concentrated in major metropolitan centres. (Peters cautions that undercounting of the Aboriginal population may be particularly "serious in metropolitan areas" which may have a "large, mobile and possibly homeless population." (Peters 1994, 7-8)

A comprehensive Aboriginal policy agenda would pay significant attention to the Aboriginal population not living in communities with a land base, and therefore with only limited possibilities for self-government. The longer urban presence of the Metis is now supplemented by an urban Indian population driven, in part, by the attractions of modernity and the good life. For others, the urban migration is a flight from anomic conditions on many reserves. The emergence of a stratified class system on many reserves, linked to unequal access to power, is then linked to the "growing problem of marginalized people leaving reserves to live in urban areas. Lack of education and skills, alcohol problems, and exclusion from mainstream institutions plant the seeds for ghetto-living." (LaPrairie 1996, 69) Behind both of these pulls and pushes to urban centres over the past four decades lies the demographic explosion of Aboriginal peoples. Overall numbers have mushroomed from about 110,000 status Indians, (Special Joint Committee 1946, 8) and about 3,000 Inuit (then Eskimo) in the 1920s (RCAP 1996, vol. 1, 14,19) (when Metis were not considered an indigenous people), to a total Aboriginal identifying population of slightly over 800,000 by 1996. (RCAP 1996, vol.1, 15) Reserves, with their limited resources, have been unable to contain the demographic explosion of Indian peoples. A

further impetus to urban migration, which will become more important in the future, is the impressive increase in the number of Aboriginal students who have completed or are taking post-secondary education. The Canada Year Book reported forty Indian students attending university in 1958-59. In 1969 there were fewer than 800 Aboriginal post-secondary graduates. Now, more than 150,000 Aboriginal people have completed or are in post-secondary education. (Borrows 1999, 75) The number of Indian and Inuit students enrolled in post-secondary institutions increased sixfold from the early eighties to more than 27,000 in 1997-98.[2] These are truly remarkable and positive developments. Although some of the graduates will find employment within Aboriginal communities, often as public servants in Aboriginal governments handling enlarged responsibilities, many will find urban employment, often in professional positions. A study employing 1986 and 1991 data identified "significant economic returns" from educational investments, including higher living standards and a reduction in "disparities between Aboriginal people and other Canadians." The author also noted a much greater employment of registered Indians in government services (31% of total employment) than was the case with other Canadians (9%) (Santiago 1997,i, 24)

Ours is an urban civilization. It would be astonishing if Aboriginal peoples had insulated themselves against this reality. Even RCAP, with its negative appraisal of urban life, looked to a future where Aboriginal peoples are proportionally represented in all the prestigious professions, "doctors, biotechnologists...computer specialists...professors, archeologists and...other careers...." (RCAP 1996, vol. 3, 501) These occupations are not found in small rural communities. It is unrealistic and inappropriate, therefore, for policy towards Aboriginal peoples to be so heavily biased toward territorially based communities and their self-governing possibilities and away from Aboriginal people in cities.

It might be assumed that the vast increase in research and publication on Aboriginal peoples in recent decades is distributed with reasonable fairness across the various locales where Aboriginal people live. Not so. Unsurprisingly, the emergence of Aboriginal peoples from the sidelines of Canadian life has attracted scholarly attention. Law professors have constituted themselves as the key intermediaries between Aboriginal

peoples and the Canadian state, or differently phrased, as the intellectual vanguard of Aboriginal nationalism. Other disciplines have developed new or expanded foci on Aboriginal peoples. Native studies departments have emerged across the country. A small but growing and influential group of young Aboriginal scholars, complemented by an Aboriginal political elite, contributes to the Aboriginal/non-Aboriginal dialogue that historically was absent when Aboriginal voices were silent. These are positive developments. However, even a casual scrutiny suggests that the distribution of scholarly attention and political discourse is powerfully biased toward nation-government and is remarkably neglectful of the urban dimension. Carol LaPrairie's landmark study, Seen but Not Heard: Native People in the Inner City refers repeatedly to the paucity of research in this area. (LaPrairie 1995, 14, 17, 246) The academic legal community has devoted minimal attention to the urban dimension of Aboriginality, possibly because it does not so readily lend itself to being addressed in the language of rights.

The dual Aboriginal agenda which emerges from the coexistence of the large urban Aboriginal presence and the nationalist aspiration for significant powers of self-government as the instrument for cultural renewal is not well served by the distribution of scholarly, political, and governmental attention. RCAP's approach is typical. Its focus on Aboriginal nations and their self-governing futures overwhelms the Report's limited attention paid to Aboriginal peoples in the city. The Commissioners evaluated urban experiences by the criterion of "the survival and maintenance of Aboriginal cultural identities in urban society," (RCAP 1996, vol.4, 522)—a criterion that could only lead to its judgement of urban life as inferior to self-governing nation-communities. Behind this policy bias was the disturbing reality from the Commission's perspective that the significance of "nation" eroded in the urban setting, and the self-governing possibilities which land-based communities could pursue were much less available. The contrast between urban living and self-governing nations was evocatively and somewhat rhetorically presented in the Report's optimistic vision of

> healthy, sustainable communities that create the conditions for a rounded life...[with] forced emigration to the margins of an essen-

> tially alien urban environment. Even if such communities have to be subsidized in the long term to give their citizens access to standards of health and education equivalent to those of other Canadians, the costs, both social and financial, are likely to be significantly less than those occasioned by a rootless urban existence. (RCAP 1996, vol.2(2), 1023).

The directional bias of RCAP and of academic scholarship towards self-government and away from urban realities is partly due to the contrast between the heady wine of nationalism and the diffuse, less easily grasped complexities of urban life. Their bias, however, is not idiosyncratic. It mirrors the historic bias of federal policy.

The long-standing bias of the Department of Indian Affairs has been toward the territorially based Indian communities. Although the historic policy of assimilation presupposed citizens of Indian background participating as individuals in mainstream society once they had passed the tests of admission embodied in the enfranchisement policy, this was to end the federal government's responsibility. Its job would be done. Although there were occasional exceptions, mainly in northern Canada, the operational policy assumption was that federal policy stopped at the borders of reserves. Consequently, the inertia still embedded in federal policy underlines the policy divide between reserve-based territorially-bounded Indian nations and urban Aboriginals, regardless of their status, or lack of it, or whether they are Indian, Inuit or Metis. The federal government bias is reinforced by the fact that the major Aboriginal organization, the Assembly of First Nations, represents the territorially based Indian communities organized under the Indian Act into bands. In sum, academic research, a massive royal commission, the government department responsible for the administration of Indian peoples, and the high profile Assembly of First Nations cumulatively reinforce each other by disproportionately attending to territorially-bounded communities with governing structures and by devoting minimal attention to the urban Aboriginal population. As they listen to each other's voices, they are confirmed in the wisdom of the misallocation of resources over which they preside. A recent publication appropriately laments the limited attention paid to the needs of urban Aboriginal peoples "by either

land-based Aboriginal governments, Aboriginal organizations or non-Aboriginal governments." (RCAP 1993, 11. See also 18, 57) This dangerous bias leads us to neglect the site where Aboriginal/non-Aboriginal interaction is most intense. Cities will be crucial to the health and civility—or their absence—of Aboriginal/non-Aboriginal relations in the 21st century.

The urban migration is a relatively recent phenomenon—dating primarily from the 1950s. As a result, in contrast to settled Indian communities, which have long been in the eye of policy and research (formerly by anthropologists), there is less historic momentum dignifying urban Aboriginals as legitimate subjects of policy or research. Further, the urban population would have a much higher profile if it did not have to share the stage with land-based Aboriginal nationalism and its much greater drawing power. Finally, the very complexity of the urban Aboriginal situation inhibits attention.

Aboriginals in the city do not present themselves to the observer as a coherent interdependent set of realities whose meaning or essence can be easily grasped. On the contrary, the reality is complex and ambiguous, and thus capable of sustaining divergent views of what is happening. As Peters notes, commenting on information gaps, "we do not have a very good understanding of what it means [for an Aboriginal person] to be an 'urban' resident." (Peters 1994, 5) There are immense variations in the urban Aboriginal reality. Only one-seventh of self-identifying Aboriginal people in Montreal could understand or speak an Aboriginal language, compared to three out of five Aboriginal identifying residents of Saskatoon. More than twice as many of the Aboriginal identifying population in Regina "participated in traditional activities" as in Toronto (53.1% to 23.1%). (Peters 1994, 12) There are huge differences among metropolitan areas in the Aboriginal participation rate in the labour force, in their unemployment rate, and also in the extent to which these rates approximate that of the overall population. The Montreal divergence is negligible; the divergence in the three prairie provinces is very high. (Peters 1994, 53, table 13)

Aboriginal urban life lacks a simplifying label, such as the inherent right of self-government, to attract attention. It also lacks the authoritative organizational focus provided by band governments for their

peoples. Clatworthy and colleagues in a study of Edmonton, Toronto and Winnipeg, observed that urban Aboriginal organizations delivered programs and services to the Aboriginal population, but doubted their capacity to function "as effective forms of urban Aboriginal self-government." They were heavily dependent on external funding, and collectively only a "small portion" of the Aboriginal population was directly provided by the organizations with benefits or services. (Clatworthy et al 1994, 33-34, 44) Further, the social base of urban Aboriginality is dramatically heterogeneous, drawing from diverse Aboriginal nations, which impedes its political organization, and hence its voice and visibility. The urban population is a statistical aggregate, not a coherent community. An interim RCAP publication described the urban Aboriginal population as "nebulous, transitory and fragmented," resulting in its invisibility. (RCAP_1993, 78. See also 63) Regina's Aboriginal population includes individuals "from twenty-seven reserves, eight Treaty areas, more than five First Nations, six provinces and two countries." (Peters 1994, 6) In addition, as noted above, the focus on cultural difference and renewal as a key justification for self-government, indeed as perhaps the essential goal driving public policy, suggests that Aboriginals in the city have chosen the wrong future. Thus RCAP's assessment of the urban setting was negative, given its thesis that land was the basis for cultural reinvigoration. The Commission's antipathy to urban life was justified by the data indicating that cultural retention was weaker, links to the Aboriginal nation of origin attenuated, language loss greater, traditional practices in retreat, intermarriage rates much higher, and the link between Aboriginal ancestry and contemporary Aboriginal self-identity was shockingly weak in some major urban centres.[3] Given these negative realities, and the Commission's overall antipathy to the urban setting, several reported positive aspects of urban life come as a surprise.

RCAP data clearly indicate various positive features of the urban experience compared to the on-reserve experience. The projected growth of jobs is much more favourable in urban locations. Incomes are significantly higher, educational attainment is superior, labour participation rates are higher and unemployment rates are lower, the likelihood of holding a full-time job is higher, and the population of social assistance recipients is much lower. Indian people in urban settings have the

highest life expectancy among Aboriginal peoples. Various indicators of social breakdown—family violence, suicide, sexual abuse, rape, alcohol and drug abuse—are markedly higher for the on-reserve Indian population over the non-reserve population. (Cairns 2000, chap. 4) These positive aspects of urban life are strongly supported in the preliminary findings of a research study by the Department of Indian Affairs Research and Analysis Directorate employing 1991 data. The study reported a marked advantage for off-reserve status Indians in terms of per capita income, educational attainment and life expectancy. Per capita income was fifty per cent higher, and life expectancy 4.6 years longer. (Beavon and Cooke 1998; Simpson 1998) A decade ago, according to Peters, citing data from metropolitan areas, there was "a significant urban Aboriginal population earning a good income" of $40,000 or more (in 1990). (Peters 1994, 28, and Table 15, 55)

These favourable trends will almost certainly be strengthened by the progressive expansion of the Aboriginal population with post-secondary education, already noted. These positive aspects of urban Aboriginality need to be underlined for they are insufficiently noted. Their incorporation into an overall assessment of the Aboriginal urban experience produces a more balanced appraisal than when attention is restricted to the depressing underside of Aboriginal urban life.

Nevertheless, that underside must attract the attention of policy-makers. The positive features are counterbalanced by the dark side of urban Aboriginal life, especially in the urban core, depressingly portrayed by LaPrairie (LaPrairie 1995). Clearly, urban life is the setting for crime, drug abuse, prostitution, and a ghetto existence for many Aboriginals.

The strong likelihood is that several major Canadian cities, especially in western Canada, will become counterparts of the American situation in which an Afro-American bourgeoisie coexists with a submerged inner core ghetto class. In Canada, the reality would be—although the numbers are both proportionately and in the aggregate smaller—an Aboriginal middle class fed by post-secondary school graduates and the marginalized and downtrodden of the city's inner core. Although urban life will result in socio-economic improvement for many Aboriginal people, for others it will lead to marginalization,

immiseration, youth gangs and other social ills capable of generating a downward cycle of despair if governments disengage themselves. The urban ghetto underclass is in part the spillover of a marginalized underclass on reserves—a group lacking access to "power through employment and kinship" which migrates in despair to cities where "lack of skills and personal problems" lead to a marginal urban existence. "They are effectively excluded from access to opportunity, power and place in both societies." (LaPrairie 1966, 64-65. See, in general, "Part IV: Explaining Aboriginal Over-Representation," 59-70))

LaPrairie noted how "normalized and 'everyday' violence had become....violence was a constant for many people." (LaPrairie 1995, 433. See also 85, 387) A recent publication of the National Association of Friendship Centres and the Law Commission of Canada portrayed a depressing future with a "very real likelihood of grim consequences for the fabric of both Aboriginal communities and Canadian society" in the absence of innovative measures directed particularly at urban Aboriginal youth. That report saw a "social deficit"—the absence of social and institutional support to counter a normlessness manifesting itself in street crime and organized youth gangs. It identified "a real and present danger in many urban centres of the entrenchment of a permanent class of Aboriginal people who are not only culturally alienated from their traditions, languages and cultures, but who are likewise being dispossessed and stripped of access to the lands, resources and traditional cultural resources essential to the maintenance and re-creation of Aboriginal cultural integrity."(The National Association of Friendship Centers and the Law Commission of Canada 1999, 63-5) These grim assessments and predictions are not idiosyncratic. Yet another report observed that even a "casual visitor" could note "all the...signals that mark the emergence of Canada's first US-style slum" in Winnipeg, which were also evident in "Regina and to some extent in other Prairie cities." (Mendelson and Battle 1999, 25)

The beginning of effective policy is the recognition of facts that cannot be wished away. The two fundamental facts whose coexistence and interdependence I have tried to underline are the move to self-government by Aboriginal nations and the very different situation of the urban Aboriginal population. Two futures are unfolding, and it is

morally as well as practically a grave policy error to concentrate on and privilege one of them. The goal of the former is to fit Aboriginal peoples and their governments into the Canadian system of self-governing provincial and territorial communities. Cultural renewal and strengthened Aboriginal identities are the sought after objective. The second future is found in our urban centres where half the Aboriginal population resides. Neither of these present and future realities should command the undivided allegiance of policy-makers.

Further, it is unreasonable and unhelpful to judge the practice of self-government and Aboriginal urban life, two very different realities, by the single criterion of cultural revival. To do so is to view the city as a distant second choice, and those who live there as, in a sense, having gone over to the other side. The judgement of urban life should not systematically overlook its advantages. This is not to assert that urban Aboriginals are indifferent to cultural concerns, nor to assert that citizens of self-governing Aboriginal nations are indifferent to jobs, material goods and an improved standard of living. Nor is it to assert that a measure of urban Aboriginal government is an oxymoron. A recent report of the national Association of Friendship Centres and the Law Commission of Canada suggests otherwise. (The National Association of Friendship Centres and the Law Commission of Canada 1999.See also Peters 1994 for a helpful background analysis.)

The city must be on our agenda in terms of both the positive and negative realities it presents. If we continue to avert our eyes, the latter may outweigh the former. Our policy neglect will contribute to the continuing degradation of an Aboriginal underclass deprived of access to the goods of urban living. Their degradation will damage the social fabric for all residents of the city.

There are two roads to the future, not one. Neither will disappear in any time frame that policy-makers need to be concerned with. An overall set of policies that is fair to both of the major dimensions of contemporary Aboriginal life must employ flexible criteria. Both nation-government and urban life are home to "goods" and "bads". The "goods" diverge with self-government serving cultural goals and urban existence serving economic goals, although both will also make contributions outside their area of comparative advantage. The "bads"

converge in social malaise, anomie and despair. The policy task is to shift the balance towards "goods" in both settings. That way we will be increasing the positive options available for individual Aboriginal Canadians. Although the mix of "goods" and "bads" vary, both settings are sites where contemporary Aboriginality and the majority society encounter each other.

Conclusion

The impediments to comprehensive understanding in this policy area are many and challenging .The triumph of 'nation' or 'nations' as the descriptive label commonly applied to Aboriginal peoples may, if its usage is not carefully circumscribed, distort our vision. 'Nation" unquestionably contributes to the self-respect of those who bear it , and enhances their recognition in the eyes of others. On the other hand, 'nation' has a potency which sits uncomfortably with poor, struggling communities of several hundred or several thousand people. Its employment should always be accompanied implicitly if not explicitly by the adjective 'small' if we are avoid confusion. In addition, the nation-to-nation description of Aboriginal/non-Aboriginal relations, a key organizing theme for RCAP, conceals their massive interdependence, conjures up a false image of Canada as an international system, and also conceals the reality that citizens of Aboriginal nations simultaneously belong as citizens to the Canadian nation. These impediments to clear thinking are supplemented by other constraints on discussion, which, for example, put pressures to do research on Aboriginal justice issues "within a politically acceptable conceptual framework." (LaPrairie 1999, 250)

Inhibitions, constraints and taboos are common when the optimism of new worlds a-borning puts those who point to possible pitfalls on the defensive. Thus with independence imminent in tropical Africa in the fifties, colonial scholars in Great Britain were castigated if their optimism was publicly qualified by their historical understanding of the depth of surviving tribal cleavages on the eve of independence. In Canada, an anthropologist recently summed up the dilemma he and his colleagues confronted in "telling it like it is" when they wrote up their research. (Dyck 1995) The conflict was between the disciplinary norm to

report unvarnished analyses of community conditions, and the fear that such frequently depressing accounts would provide ammunition for the opponents of self-government, which most anthropologists supported. Finally, the "insider" thesis—that one has to be one to know one to study one—leads to the despairing thesis that we live in incommensurable solitudes incapable of communicating with or understanding each other. Fortunately, those who assert the thesis fail to act on it, as to do so would be self-defeating as they would deny themselves the opportunity of communicating with the "other" whom they hope to influence.

These roadblocks in the way of a better understanding of where we are and the choices we face are dwarfed in significance by the overwhelming policy bias towards self-government, which has led to a relative intellectual and policy neglect of urban Aboriginals—fifty per cent of the total. It is as if we decided to keep our gaze fixedly on the glamorous goal of self-government and to relegate urban Aboriginal peoples to the margins of our existence and attention.

The urban Aboriginal population provides grounds for both optimism and pessimism. To tilt the scale towards the former, public policy and academic research must redress the neglect of this second road to the future. To fail to do so will produce a drift to a Canadian version of the American urban divide between an Afro-American (in Canada, Aboriginal) middle class and ghettos of crime, violence and marginality. This would be an extraordinarily heavy price to pay for our one-sided concentration on self-government for Aboriginal nations. Our successors, both Aboriginal and non-Aboriginal, but especially the former, living with the tensions and wasted lives we would have bequeathed them would be unforgiving of our blindness.

Notes

1. Kymlicka defines a "societal culture [as] a territorially concentrated culture centred on a shared language that is used in a wide range of societal institutions, including schools, media, law, the economy, and government."(Kymlicka 1998, 27)
2. Aboriginal students in post-secondary programs are much more likely than other Canadians to select trade and non-university programs than university programs—76% to 24% for registered Indians, 70% to 30% for other Aboriginal

students versus 58% to 42% for other Canadians (1991 figures). (Santiago 1997, 14-16)

3. These aspects of urban life are discussed in Chap. 4, "The Constitutional Vision of the Royal Commission on Aboriginal Peoples." (Cairns 2000)

Bibliography

Barsh, Russel Lawrence (1993) "The Challenge of Indigenous Self-Determination," University of Michigan Journal of Law Reform , 26 no. 2, Winter.

Beavon, Daniel and Martin Cooke (1998) *Measuring the Well-Being of First Nation Peoples,* mimeo, October 2, 1998.

Borrows, John (1999) "'Landed' Citizenship: Narratives of Aboriginal Political Participation," in Alan C. Cairns, et al, eds., *Citizenship, Diversity and Pluralism: Canadian and Comparative Perspectives.* Montreal: McGill-Queen's University Press.

Cairns, Alan C. (2000) *Citizens Plus: Aboriginal Peoples and the Canadian State.* Vancouver: University of British Columbia Press.

Canada. Department of Indian Affairs and Northern Development *(1985, 1990, 1999) Schedule of Indian Bands, Reserves and Settlements Including Membership and Population Location and Acreage in Hectares,* June 1, 1985; December 1990; January 22, 1999. Ottawa: DIAND.

Canada (1983) House of Commons. Special Committee on Indian Self-Government, *Indian Self-Government in Canada. Minutes and Proceedings*, no. 40, October 12 and 20, 1983 (The Penner Report)

Canada *(1996) Report of the Royal Commission on Aboriginal Peoples*, 5 vols. Ottawa: Canada Communication Group Publishing.

Clatworthy, Stewart, Jeremy Hull and Neil Loughran (August 1994) *Urban Aboriginal Organizations: Edmonton, Toronto and Winnipeg* (Prepared for Policy and Strategic Direction, Department of Indian Affairs and Northern Development (Indian and Northern Affairs Canada)

Cumming, Peter A. and Neil H. Mickenberg (1972) *Native Rights in Canada*, 2nd ed. Toronto: University of Toronto Press.

Dyck, Noel (1995) "'Telling It Like It Is:' Some Dilemmas of Fourth World Ethnography and Advocacy" in *Anthropology, Public Policy and Native Peoples in Canada,* ed. Noel Dyck and James B. Waldram. Montreal and Kingston: McGill-Queen's University Press.

Four Directions Consulting Group (August 1997).*Implications of First Nations Demography: Final Report.* Research and Analysis Directorate: Indian and Northern Affairs Canada.

Hawthorn, H.B., ed. (1966 and 1967) *A Survey of the Contemporary Indians of Canada,* 2 vols. Ottawa: Queen's Printer.

Indian and Northern Affairs Canada (1997, 1998, 1999), *Basic Departmental Data 1996, 1997, 1998.* Ottawa: Department of Indian Affairs and Northern Development.

Indian Chiefs of Alberta (1970) *Citizens Plus: A Presentation by the Indian Chiefs of Alberta to Right Honourable P. E. Trudeau, June 1970* . Edmonton: Indian Association of Alberta.

Indian-Eskimo Association of Canada (1970) *Native Rights in Canada.* Toronto: Indian-Eskimo Association of Canada.

Jackson, Robert (1993) "The Weight of Ideas in Decolonization: Normative Change in International Relations," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change,* ed. Judith Goldstein and Robert O. Keohane. Ithaca: Cornell University Press.

Kymlicka, Will (1998) *Finding Our Way: Rethinking Ethnocultural Relations in Canada.* Don Mills, Ont.: Oxford University Press.

LaPrairie, Carol (1995) *Seen but Not Heard: Native People in the Inner City.* Ottawa: Department of Justice.

LaPrairie, Carol (1996) *Examining Aboriginal Corrections in Canada* (Aboriginal Corrections, Ministry of the Solicitor General)

LaPrairie, Carol (1999) "The Impact of Aboriginal Justice Research on Policy: A Marginal Past and an Even More Uncertain Future," Canadian Journal of Criminology , April 1999.

Loram, C.T. and T.F. McIlwraith, eds.(1943) *The North American Indian Today.* Toronto: University of Toronto Press.

Mendelson, Michael and Ken Battle (1999) *Aboriginal People in Canada's Labour Market.* Ottawa: Caledon Institute of Social Policy.

National Association of Friendship Centres and the Law Commission of Canada *(1999) Urban Aboriginal Governance in Canada: Refashioning the Dialogue* (Ottawa)

Peters, Evelyn (1994) *Demographics of Aboriginal People in Urban Areas in Relation to Self-Government: A Report Prepared for Policy and Strategic Direction, Department of Indian Affairs and Northern Development* (Indian and Northern Affairs Canada)

Pitsula, James M. (1994) "The Saskatchewan CCF Government and Treaty Indians, 1944-64," Canadian Historical Review, LXXV, no. 1, March.

Prince, Michael J. and Frances Abele (1999) *Funding an Aboriginal Order of Government: Recent Developments in Self-Government and Fiscal Relations,* mimeo, May 31, 1999.

RCAP (1993) *Aboriginal Peoples in Urban Centres*. Ottawa: Minister of Supply and Services, Canada.

RCAP (1996) *Report*, vol. 1: *Looking Forward, Looking Back*. Ottawa: Canada Communication Group Publishing.

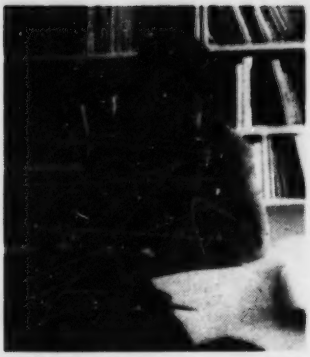
RCAP (1996), *Report*, vol. 2(2): *Restructuring the Relationship*. Ottawa: Canada Communication Group Publishing.

RCAP (1996) *Report*, vol. 3: *Gathering Strength*. Ottawa: Canada Communication Group Publishing.

RCAP (1996) *Report*, vol. 4: *Perspectives and Realities*. Ottawa: Canada Communication Group Publishing.

Santiago, Marcia (May 1997) *Post-Secondary Education and Labour Market Outcomes for Registered Indians. Prepared for Research and Analysis Directorate* (Indian and Northern Affairs Canada)

Simpson, Jeffrey *(1998)"* Aboriginal Conundrum", *Globe and Mail*, October 15, 1998.



Andrée Lajoie

Andrée Lajoie, MSRC

Gouvernance et société civile

Résumé

Les concepts de gouvernance et de société civile sont tous les deux polysémiques—le second davantage que le premier—et également idéologiques, le premier plus souvent marqué à droite que le second. Leur intersection majeure se situe en terrain néo-libéral où elle tente d'évacuer l'État au profit de mécanismes de domination favorables aux intervenants auxquels profite le rapport de forces—lire : le marché. Mais une seconde intersection, moins omniprésente, ancrée dans un autre type de pluralisme extra-étatique, vise au contraire à évacuer la domination qu'exerce l'État de droit sur les populations colonisées.

Ces deux types d'intersection entre gouvernance et société civile sont actuellement présentes au Canada, pour des raisons et avec des conséquences que je tenterai d'analyser dans ma communication.

Abstract

Governance and civil society are concepts which are both polysemous—the second more than the first—and ideological, the first leaning more often to the right than the second. Their main interface lies in the neo-liberal terrain, where it

seeks to bypass the state for the benefit of certain mechanisms of domination favourable to those stakeholders that profit from the power play, viz. the market. A second interface, however, less pervasive and deeply rooted in another kind of non-state driven pluralism, seeks to shove aside the domination over colonized populations by the rule of law.

At present, both kinds of interfaces between governance and the civil society can be observed in Canada, for reasons and with consequences that I shall endeavour to analyse in my presentation.

Les concepts de gouvernance et de société civile sont tous deux polysémiques—le second davantage que le premier—et également idéologiques, le second maintenant plus souvent marqué à droite: c'est la première piste de réflexion que je voudrais poursuivre avec vous aujourd'hui (I). Par ailleurs, au moins deux types d'intersection entre gouvernance et société civile sont actuellement présents au Canada. Une première intersection, majeure, se situe en terrain néo-libéral, où elle tente d'évacuer l'État au profit de mécanismes de domination favorables aux intervenants auxquels profite le rapport de force—lire: le marché. La seconde, moins envahissante, ancrée dans un autre type de pluralisme, extra-étatique, vise au contraire à évacuer la domination qu'exerce l'État de droit sur les populations colonisées. Il s'agira en second lieu de tenter d'analyser les raisons et les conséquences de ces intersections (II).

I -Deux concepts à la fois polysémiques et idéologiques

Ce colloque est à peine amorcé et déjà la polysémie du concept de gouvernance est si manifeste qu'à la fois elle me dispense d'en faire la démonstration et rend inévitable pour chacun de nous le choix d'un sens pour ce vocable, ne serait-il qu'heuristique. Mais malgré l'envie pressante de me situer tout de suite à l'égard de ce concept qui nous réunit tous ici, il me semble préférable de commencer par examiner celui de société civile, plus ancien de beaucoup et dont l'histoire inachevée explique peut-être en partie l'émergence plus récente de celui de gouvernance.

1. Société civile

Dans une première conception, la société civile—le terme serait d'abord apparu[1] chez les jus naturalistes classiques—Locke, Hobbes, Rousseau—réfère à une société "civilisée" caractérisée, contrairement à l'état de nature, par la prédominance de relations sociales régies par le droit naturel. À partir d'Hegel[2], la société civile commence à se définir plus nettement comme privative du politique et conséquemment de l'État. Dès cette époque, deux courants se dessinent. Le premier prend, à droite, le relais des naturalistes et voit la société civile comme naturellement orientée par les règles qui émergent de la sphère économique telle que

conçue par Hume, et plus tard Ricardo et Smith, et que le capitalisme naissant désignera comme à l'abri de l'action étatique, limitée à ce qui est "strictement politique". Le marché libéral, tel qu'il va se cristalliser au XIX[e] siècle, apparaît donc comme un lieu auto-régulé, distinct et indépendant des institutions politiques qui ont hérité et pris le relais de l'imperium féodal. Théorisé, ce marché, vu comme la résultante involontaire et incontrôlable des intérêts particuliers et comme la structure de base naturelle et inaltérable du fonctionnement social, se traduira dans cette première version du concept de société civile. En droit, c'est sans doute Hayek qui assume le plus ouvertement cet héritage, en le reliant au surplus à la distinction public/privé[3]

Dans ce contexte l'expression ne connote donc pas seulement le terrain social résiduaire de celui qu'occupe de fait l'État, mais une opposition beaucoup plus fondamentale et normative qui fonde son caractère idéologique: la société civile serait, de par la nature même des choses, le territoire clos que ne doit pas franchir l'État. Dans cette polarisation classique, c'est la société civile qui a la primauté sur l'État qui lui est asservi[4]. C'est—Lochak l'exprime parfaitement[5]—la matérialisation exceptionnellement réussie des intérêts dominants de l'époque.

On aborde ainsi le second courant, marxiste, qui utilise la même opposition société civile/société politique-État mais, on l'imagine, à d'autres fins. Il s'agit non plus cette fois de libérer la société civile et le droit naturel qui la régit de l'État répressif mais, pour Hegel[6], de confier à l'État la répression des abus du capitalisme, en attendant—pour Marx et Engels[7]—son remplacement par la dictature du prolétariat. À partir de là, et au delà des nuances internes au marxisme quant à savoir si la société civile appartient à la structure ou à la super-structure, ce qu'il faut retenir, c'est que pour Marx et Engels[8] comme pour Gramsci[9], la société civile réfère à un état social pré-étatique de développement des relations économiques antérieur à l'étape proprement politique où s'installe l'État. C'est d'ailleurs le sens dans lequel la gauche italienne récupérera le concept de société civile dans les années 80, où il sert de repoussoir à une société dominée par les partis politiques[10]. Et si l'effet final programmé c'est—pour le courant marxiste comme pour la droite libérale—le retrait de l'État, ni l'objectif, ni l'orientation idéologique ne sont évidemment les mêmes.

Par la suite, on le sait, en dépit des échecs du marxisme et malgré l'efficacité indéniable de l'idéologie libérale, sinon à la faveur même de ses contradictions internes qui postulent la nécessité de l'État comme garant et promoteur des conditions optimales de fonctionnement du marché en même temps qu'elles restreignent la légitimité de ses interventions dans le secteur privé, la sphère d'intervention de l'État s'est accrue jusqu'aux limites de l'État-providence. Pour emprunter le langage de l'idéologie libérale, l'État a ainsi "envahi la société civile". Il devenait dès lors difficile de conserver ce sens hégélien, partagé par les libéraux et les marxistes, de l'expression société civile précisément définie comme spécifiquement étanche à l'État.

On aura compris que dans les années 70, et même dans la phase néolibérale actuelle où l'État-providence s'estompe, une conception aussi tranchée de société civile que celle que je viens de décrire paraît mythique. Quel que soit le retrait actuel de l'État, il n'est plus possible de voir la frontière société civile/État comme infranchissable puisque, de fait, elle a été franchie: il n'est pas nécessaire d'avoir habité un pays réputé totalitaire pour le constater. En conséquence, l'expression société civile en est venue à désigner non pas l'espace qui doit naturellement, en vertu d'une définition essentialiste ou prescriptive, rester à l'abri de l'État, mais celui qui, de fait, tel que décrit phénoménologiquement, n'a jamais été—ou n'est pas, au moment choisi par l'observateur—régi par l'État.

La portée exacte de l'expression, l'extension même de la société civile, n'est pas facile à cerner dans ces circonstances: car contrairement à ce qui fut peut-être le cas au XIX^{e} siècle ou sous l'empire romain, ni la sphère domestique, ni la famille, ni même l'intimité personnelle n'échappent maintenant à l'emprise des règles de l'État. Cette présence de l'État (ou cette action, cette intervention, cet envahissement, suivant les contextes idéologiques que trahissent ces variantes langagières) a été abondamment documentée et décrite par les commentateurs de l'État-providence et suffirait à accréditer la vision contemporaine et plus réaliste des rapports société civile/État, plus proche de la compénétration et de la confusion que d'une opposition polarisée. Mais il revient notamment à Habermas[11] et Jalbert[12] d'avoir montré que ce mouvement n'était pas unidirectionnel, et d'avoir souligné l'effet de symbiose et d'interconnection ainsi déclenché sur la frontière société civile/État: la

pénétration des intérêts privés dans les mécanismes régulateurs de l'État, par le biais de la consultation, du lobbying, de l'exportation des modes de gestion privée et des concepts participationnistes dans l'administration étatique, va donc instaurer un mouvement parallèle de retour de la société civile vers l'État, accentuant ainsi la "porosité" d'une frontière déjà criblée par les excursions de l'État dans ce qui aurait été, dans un passé mythique, le territoire exclusif de la société civile.

Tant et si bien que c'est la gauche communautariste qui va, à partir des années récentes, réinvestir le concept de société civile par le biais du pluralisme, notamment juridique. Elle partage avec les libéraux le principe de la primauté de la société civile sur l'État, défini par ses organes centraux. Mais elle s'en distingue à deux égards. D'abord, elle voit le pouvoir comme pluriel et décentralisé dans la société et le droit comme produit aussi par d'autres sources que l'État[13]. Au droit public et privé émanant de l'État libéral, on substitue le droit étatique et non- étatique, de chaque côté d'une frontière pour le moins analogue à celle qui sépare la société civile hégélienne de l'État. Ensuite, tous les tenants de ce courant n'adhèrent pas, du moins explicitement, au concept de société civile, même si l'existence de normes non-étatiques postule nécessairement, en contrepartie, celle d'un espace social à l'abri de l'État, d'où elles puissent émerger. Mais, qu'ils réfèrent expressément ou non à la société civile, les participationnistes de la deuxième gauche comme les tenants du pluralisme juridique ne la confondent pas avec le marché, dont les intérêts ne se traduisent évidemment pas pour eux en règles naturelles et nécessaires. Leur oasis est celui des solidarités sociales.

Au terme de ces analyses, le concept contemporain de société civile apparaît donc comme un instrument polysémique destiné à revendiquer et promouvoir un espace social idéalisé à la manière d'un moi idéal collectif, si l'on autorise cette transposition[14], un espace libéré de la présence de l'État pour permettre, selon les lieux idéologiques d'où on l'interpelle, la résurgence d'un marché néo-libéral ou, au contraire, l'émergence d'institutions issues de modes participationnistes de régulation sociale.

2. Gouvernance

Comme le concept de société civile auquel il est d'ailleurs souvent relié, le terme "gouvernance" fait partie de la langue de bois des sciences sociales contemporaines dont il est l'un des buzzwords les plus fréquents. Utilisé à des fins idéologiques disparates, voire opposées, depuis son apparition au milieu des années soixante-dix de ce siècle, beaucoup plus récente que celle de société civile, il revêt lui aussi une multitude de sens différents selon les contextes et les finalités. Dans un document inédit préparé en 1998 pour la Commission du droit du Canada, Tim Plumptre de l'Institut sur la gouvernance le campe sans doute dans sa conception la plus large: "la gouvernance concerne tout ce qui a trait aux institutions, aux processus et aux traditions qui interviennent dans les débats d'intérêt public"[15], où il inclut le gouvernement, le secteur public (qu'il nomme "quasi-gouvernement"), la société civile, le secteur privé, les citoyens, les traditions, l'histoire, la langue, la culture, les médias. Ce concept pour le moins englobant et dont tous les éléments constitutifs ne sont pas toujours clairement mutuellement exclusifs ni du même ordre logique, lui sert ainsi d'instrument pour reformuler, autour des citoyens dont la participation active au processus est au coeur de sa démarche, une démocratie où la distinction entre pouvoir et influence est volontairement estompée.

Il note cependant que ses recherches documentaires dans différentes banques de données lui ont permis de dégager, de la masse de près de 1,000 titres relatifs à la gouvernance repérée depuis l'apparition de ce terme en 1974, quatre principaux sens: corporate governance, connotant les entreprises privées (environ 60% des titres[16]); educational governance, relative aux commissions scolaires et à la gestion des universités (10%[17]); local governance, dans le domaine municipal[18] et, enfin, self-governance, dans le cadre de la décolonisation[19], ces deux dernières acceptions totalisant environ 10% des occurences. Après ce colloque, il faudra sans doute y ajouter la gouvernance de la science, de la santé et de l'armée... sans parler de celle du fédéralisme, idéologie canadienne oblige!

Pourtant, la prépondérance des usages du terme liés aux entreprises privées indique bien son origine idéologique visant à atténuer le rôle de l'État en soulignant son retrait déjà amorcé dans la foulée de la

mondialisation du marché. En déplaçant le forum décisionnel public vers les organes non-élus—administration et tribunaux—et en multipliant les centres de décisions politiques à l'extérieur de l'État ainsi décentré, il s'agit de construire de nouvelles architectures de pouvoir présumément plus souples, plus proches des citoyens, mieux adaptées, notamment à la mondialisation. Tant que l'on reste dans la première hypothèse: glissement du pouvoir législatif vers l'administration et surtout les tribunaux, le contrôle démocratique continue d'opérer[20].

Mais la chose est moins claire quand il s'agit de déplacer les décisions affectant l'ensemble de la collectivité vers des pôles décisionnels privés ou moins représentatifs, sur lesquels seuls les groupes intéressés ont prise. On fait comme si on changeait par là le caractère intrinsèquement public de ces décisions, alors qu'on en occulte simplement la dimension politique, dès lors soustraite au contrôle démocratique.

Comment expliquer cette évolution des structures politiques et ce concept nouveau pour l'accompagner? On évoque—confondant par là la cause avec l'effet—la crise de l'État, "-nation" ou "-providence". Ou la mondialisation, comme si le commerce international et la délocalisation des emplois n'avaient pas prospéré à l'intérieur du réseau des États. Se rapprochant du but, on réfère au changement des mentalités, (idéologies?) dont témoignent les nouveaux "récits"[21] articulés "autour de cinq éléments-clés: l'individu, le marché, l'"équité", l'entreprise et le capital"[22].

Mais il semble bien que Pétrella mette le doigt sur les facteurs les plus lourds de cette conjoncture qui entraîne à la fois la récusation de l'État,—providence ou nation—et les changements de mentalité qui l'ont permise. Dans cet article dont je vous recommande la lecture entière[23], il en énumère trois, dont le premier (nouvelles révolutions scientifiques et technologiques) est connu, mais les deux autres valent mention:

> [...] incitent à participer à la conception d'une nouvelle narration de la société et du monde: [...] la baisse du taux de profit du capital dans le cadre d'une économie occidentale en perte de vitesse face à la montée de nouveaux concurrents extérieurs; la crise de plus en plus

évidente des pays dits "socialistes" en tant que possible modèle de rechange crédible[24]. (J'ai souligné)

On comprend mieux maintenant en quoi le concept de gouvernance vient compléter celui de société civile, dont les carences rendaient l'apparition nécessaire. Car en postulant l'existence d'une société civile distincte de l'État et même en la posant comme étanche à son égard, on n'arrivera toujours, au mieux, qu'à préserver un espace auto-régulé, à l'abri des interventions étatiques. Pour que les décideurs privés régissent aussi d'autres domaines identifiés depuis longtemps au secteur public, il fallait phagocyter activement l'État de l'intérieur, supprimer son rôle social de "providence" et de redistribution des profits. Pour cela un autre instrument idéologique était nécessaire qui, abolissant la frontière public/privé, disloque l'État lui-même et l'engouffre dans la société civile où, dépossédé de la puissance publique désormais pulvérisée à travers le secteur privé, il ne serait plus que "gouvernance". Mais le retour du refoulé—surtout du politique refoulé—toujours inévitable, n'est jamais très loin: à renvoyer ainsi à la "société civile" les décisions de "gouvernance" dont on croyait par là occulter le caractère public, on n'a réussi qu'à repolitiser la société civile, en retournant dès lors à la case départ du jus naturalisme...

Ainsi les concepts, une fois lancés, semblent-ils avoir une vie autonome, et la droite, comme l'indique bien les usages multiples qu'a relevés Plumptre du terme de gouvernance, n'a pas conservé le monopole de ce concept qu'elle avait fabriqué pour chasser l'État-providence de "son" domaine privé et surtout l'envahir à son tour. À démanteler et, surtout, délégitimer ainsi l'État-providence qui l'encombrait dans sa chasse aux profits, elle a donné des idées à d'autres, qui se sont empressés de s'attaquer à l'État-nation: des groupes brimés par sa majorité (ou sa minorité dominante) femmes, gais et lesbiennes, mais aussi, au Canada, les Autochtones, sans oublier les Québécois.

Si la réaction des trois premiers groupes—que l'on peut qualifier de minorités sociales au sens où elles ne cherchent pas à sortir de l'État, mais à y obtenir un traitement égalitaire atteignable par certaines formes de gouvernance classique—n'avait pas de quoi inquiéter outre mesure les tenants néo-libéraux de la gouvernance, il n'en va pas nécessairement

de même des deux derniers, qui constituent par contraste des minorités politiques, pour lesquels le territoire même est un enjeu qui appelle la self-governance.

Dans ce contexte de décolonisation inachevée, le concept de gouvernance perd son caractère inoffensif, même pour ceux qui l'ont construit au départ: les apprentis sorciers sont par définition inconscients... comme nous allons le voir en examinant les deux intersections les plus visibles au Canada entre gouvernance et société civile.

II -Deux intersections dissemblables mais interreliées

C'est ce même lien—décelé entre les concepts de société civile et de gouvernance et expliquant, comme par autopoëse, leur apparition successive—qui éclaire également les rapports entre les deux intersections pourtant dissemblables observées entre ces deux concepts. La première, repérée au Canada mais sans doute présente mondialement à l'échelle des démocraties libérales, superpose, en terrain néo-libéral, le concept de gouvernance aux deux acceptions successives de l'expression société civile qu'a proposées la droite. La seconde, plus spécifiquement canadienne, se retrouve sans doute analogiquement dans d'autres pays néo-coloniaux. Elle prend appui ici, à partir d'une société qui n'est "civile" que suite au refus de la majorité de la reconnaître comme politique, sur le concept émancipateur de self-governance.

1. Gouvernance et société civile néo-libérale

C'est surtout pour discuter de la première de ces deux intersections, coextensive au champ politique tout entier, que nous avons été conviés ici, celle qui réunit, en terrain néo-libéral, la gouvernance (nationale, continentale, internationale) et une société civile naguère résiduelle mais aujourd'hui en train d'investir l'État à travers la frontière poreuse qui ne l'en sépare plus. Pour s'en convaincre, il suffit de consulter le programme, où il n'est question que de gouvernance privée, fédérale et internationale, appliquée à des domaines concrets comme la santé, la science ou l'armée.

Si l'on en doutait encore, il faudrait se rapporter aux propos récents de Gilles Paquet au Devoir. M. Paquet qui—c'est tout à son

honneur—m'a néanmoins invitée ici en connaissance de cause puisqu'il m'a dit l'avoir fait à la suite de la lecture de mon article de 1991 sur le sujet, confiait au journal que la Révolution tranquille (lire: la version québécoise de l'État-providence) aurait réduit le "capital social" du Québec, "formé de la riche trame d'institutions traditionnelles (famille, religion, communauté)", qu'il faudrait maintenant tenter de reconstruire en "enray[ant] autant que possible l'action corrosive sur la société civile de l'État centralisateur et homogénisateur"... Rien de moins!

En pleine nostalgie de la version hégélienne d'une société civile distincte de l'État, et qui doit y rester étanche, on s'oriente néanmoins vers la pénétration de l'État par les "citoyens producteurs de gouvernance", dont il faut sans doute comprendre qu'ils y importeront, à force de politesse et de civilité—je cite le journaliste qui cite Gilles Paquet—la consultation, le lobbying, la sous-traitance, la déréglementation et d'autres modes de gestion privée: ai-je entendu "déficit zéro"? Non content de cette hémorragie interne où il a abandonné le système public de santé qui constituait naguère sa principale distinction identitaire à l'égard des États-Unis, l'État canadien se videra aussi latéralement à travers l'ALENA qui a supprimé pratiquement sa frontière sud, et par le haut où il exporte, à défaut d'autre ressources, sa constitution, devenue en grande partie supra-nationale[25].

C'est bien l'État-providence, avec ses effets redistributeurs néfastes aux profits corporatifs, qu'il s'agissait d'abattre en privatisant tout ce qui bouge. Les services de santé, la Société Radio-Canada et l'Office national du film—par le retrait des investissements publics—, la recherche—par l'imposition des partenariats—, le transport routier—par la déréglementation—, le transport ferroviaire et aérien—par la privatisation, à défaut de l'exportation aux USA, ratée—en ont été les premières victimes. Quelles seront les prochaines? Les prisons, où le processus est déja amorcé? L'enseignement supérieur? Pleurera bien qui pleurera le dernier.

Mais la droite a fait d'une pierre deux coups. Seul le premier était intentionnel: parodiant la chanson, elle "visa le noir, tua [aussi] le blanc"... En abattant l'État-providence, les néo-libéraux qui ont suscité cette première intersection de "leur" société civile avec la gouvernance ont atteint ce qui en tient lieu d'État-nation au Canada, bref, l'État tout

court. Tour à tour, la privatisation a détruit les éléments constitutifs de l'identité canadienne: chemins de fer, Radio-Canada, système de santé, frontières, et cela dans un contexte de fragilité particulière d'un État resté bi-national depuis le XIXe siècle—pendant que les autres États modernes, "chargés de l'unité de l[eur] société" et "investis de son identité"[26], construisaient l'hégémonie culturelle et matérielle qui allait servir de base à leur État-nation—pour devenir, sans transition, par son adoption de l'idéologie multiculturaliste en réaction au rapport de la Commission Laurendeau-Dunton[27], "l'État post-moderne par excellence"[28], dès lors privé de sa légitimité traditionnelle et bien en peine de s'en découvrir une autre...

Ce faisant, les néo-libéraux n'ont sans doute pas perçu clairement qu'en affaiblissant un État désormais privé de sa légitimité et, par là, de ses dernières chances de devenir un véritable État-nation, investi de l'identité qu'ils ont construite pour la société dont il est issu, ils le privaient en conséquence de son effectivité dans des champs où ils auraient pourtant souhaité que sa majorité continue de dominer[29], ouvrant ainsi la porte à la gauche anti-colonialiste, qui allait introduire la seconde intersection observée au Canada entre société civile et gouvernance.

2. Self-governance et société "civile" autochtone

C'est également la double polysémie idéologique qui traverse pareillement "société civile" et "gouvernance", sur laquelle je me suis attardée, qui permet la survenance de cette seconde intersection—nettement moins envahissante pour n'être pas moins importante—entre ces deux concepts dans une partie du même champ social. Il s'agit en effet d'une autre société civile: non plus l'agrégat individualiste des corporations et des intérêts privés, mais le champ communautariste des solidarités sociales, où les identités collectives se développent autour d'éléments sociaux, culturels et même ethniques: c'est de cette société, mal nommée "civile", que se réclame l'autochtonie, cette entité foncièrement politique qui refuse de se dissoudre dans les formes colonisantes que le droit canadien tente de lui imposer par communautés interposées.

Et d'une autre gouvernance. En effet, même si le concept impliqué dans cette seconde intersection comprend tous les éléments qu'y inclut

Plumptre (institutions, processus et traditions qui interviennent dans les débats d'intérêt public: gouvernement, secteur public, secteur privé, citoyens, histoire, langue, culture, média), il les range dans un autre ordre et en reformule quelques-uns pour déboucher sur une intégration différente du tout.

Ainsi, il est certain que, pour les Autochtones, la tradition, la culture, l'histoire, la langue sont des sources de normativité aussi importantes que les institutions gouvernementales et para-publiques. Mais, dans le contexte du mouvement contemporain de self-government autochtone, cette intersection réfère au concept de self-governance, lié davantage à la décolonisation que de la version de Plumptre, dont il diffère à d'autres égards. En effet, ce ne sont pas tant les citoyens individuels qui le polarisent que les groupes/institutions, traditionnels et émergents: l'accent est donc mis également sur l'organisation du pouvoir normatif et politique (y compris les institutions non-étatiques) et sur l'influence et les médias; sur le développement social et politique autant qu'économique, sans pour autant instituer les corporations privées en pouvoir public.

On peut ainsi tenter d'organiser, à travers la self-governance, d'autres architectures de pouvoir qui soient mieux susceptibles d'agencer les rapports entre les Autochtones et les autres Canadiens. Ces agencements se sont d'ailleurs déjà amorcés spontanément dans le cadre intra-étatique aussi bien qu'extra-étatique.

Au plan interne de l'État canadien, on note en effet déjà un glissement—qui se stabilise au point de sembler permanent—entre le pouvoir législatif/éxécutif d'une part et la Cour suprême de l'autre. Parce que notre constitution est rigide et que le conservatisme des mentalités locales—qui pèse plus lourdement sur les élus que sur le judiciaire—n'encourage pas non plus à préciser les droits ancestraux et issus de traités constitutionnalisés en 1982, les Autochtones s'adressent de plus en plus souvent aux tribunaux non pas pour régler définitivement les conflits qui les opposent au pouvoir blanc en cette matière, mais pour amener ce dernier à négocier les solutions qui tardent. Les arrêts Delgamuukw[30] et Marshall[31] en sont les exemples les plus récents. Cet agencement de pouvoir est nouveau non seulement parce qu'il opère un glissement du politique vers le judiciaire, mais parce qu'il s'agit moins d'un pouvoir

décisionnel que d'une influence des tribunaux sur le processus de négociations.

Plus caractéristiques encore de la gouvernance sont les moyens employés par les Autochtones pour arriver à ce résultat: non seulement l'introduction d'un pouvoir judiciaire, mais l'utilisation de stratégies internationales de persuasion qui passent aussi bien par la narrativité devant l'ONU[32] que par les médias étrangers et les manifestations à des moments bien choisis[33]. Ce type de solution demeure démocratique non seulement parce que formellement c'est la constitution qui investit la Cour du contrôle de la constitutionnalité des lois, mais parce que les tribunaux sont surdéterminés par les mêmes valeurs que le législateur et ne peuvent pas plus que lui en intégrer au droit qui seraient inacceptables à la majorité[34].

Les architectures de la self-governance extra-étatique que constituent les ordres juridiques traditionnels co-existant parallèlement avec les Conseils de bande dans les communautés autochtones ont été avec la légitimité des rapports moins simples, analysés ailleurs[35]. Il suffira de rappeler ici que, selon nos observations, l'effectivité des normes qu'ils émettent dépendrait de trois conditions qui ne sont pas souvent réunies, et ne risquent surtout pas de l'être quand le territoire sera vraiment en jeu: les ressources financières, la légitimité interne et la crédibilité externe.

On mesure dès lors les limites intrinsèques à l'intersection, en contexte canadien, entre self-governance et société civile communautarienne: ces nouvelles architectures de pouvoir, utiles pour aménager les relations intra-étatiques entre des groupes sociaux qui s'inscrivent volontairement dans ce cadre, deviennent impuissantes dès que les enjeux se déplacent vers l'exclusivité du pouvoir politique et du contrôle du territoire.

Or, quand on s'aventure sur le terrain de cette intersection, chez les Autochtones comme chez les Québécois, on ne sait jamais à quel moment cette frontière sera franchie. Non plus, d'ailleurs, que l'on peut déterminer quand sera franchie celle qui retient les populations, coincées par le chômage résultant de la première intersection entre la corporate governance et la société civile néo-libérale, de mettre fin à ce régime

comme elles l'ont fait dans les années 30. Il n'y a pas de panacées, et les solutions formelles ne peuvent pas remplacer les solutions de fond.

Notes

1. Selon Norberto BOBBIO, "Gramsci and the Concept of Civil Society", (traduction: C. Morterra), dans John KEANE, dir., *Civil Society and the State*, London (N.Y.), Verso, 1988, pp. 78-99, auquel j'emprunte en partie ce développement sur Hegel. Gérard BERGERON, *Petit traité de l'État*, Paris, P.U.F., 1990, p. 93, retrace cependant l'expression, dans le sens plus restreint où elle vise à établir une distinction avec la société religieuse, chez Marsile de Padoue qui publia *Defensor Pacis* en 1324. Sur l'évolution du concept, voir également Danièle LOCHAK, "La société civile du concept au gadget", dans Jacques CHEVALIER, dir., *La société civile*, P.U.F. 1968, pp.44-75 et mon texte antérieur sur le même sujet, dont j'emprunte ici certains passages en les développant: Andrée LAJOIE, "Contributions à une théorie de l'émergence du droit., I- Le droit, les droits, l'État, la société civile, le public, le privé: de quelques définitions interreliées", (1991) 25 *R.J.T.* 103-143.
2. Voir BOBBIO, *ibid.*, p. 79.
3. Friedrich August von HAYEK, *Droit, législation et liberté: une nouvelle formulation de principes libéraux de justice et d'économie politique*, Paris, P.U.F., 1980, pp. 104-105.
4. Bien que pour Hegel, semble-t-il, l'inverse demeure souhaitable, dans l'intérêt même du libéralisme. *Ibid.*, p. 53.
5. *Ibid.*, p. 52.
6. Voir BOBBIO, précité note 1, p. 79.
7. Georg Wilhelm Friedrich HEGEL, *Hegel's Philosophy of Right*, trad. Knox, Oxford, 1965, commenté par BOBBIO, précité note 1.
8. Friedrich ENGELS, "Ludwig Feuerbach and the End of Classical German Philosophy" dans Marx and Engels, *Selected Works*, vol. 1, Moscou, 1973, pp. 38, 76.
9. Antonio GRAMSCI, *Prison Notebooks*, dir. et traduction: Q. HOARE et G.N. SMITH, Londres, 1971.
10. Corrado STAJANO, "Losing Sight of Civil Society", *Herald Tribune/Italy Daily*, 15 septembre 1999, p. 2.
11. Jürgen HABERMAS, *L'espace public: archéologie de la publicité comme dimension constitutive de la société bourgeoise*, Paris, Payot, 1978.
12. Lisette JALBERT, "État-providence et dynamique des droits: un mode de régulation circonscrit", communication au Colloque "État-providence et société civile", Ottawa, 27 février 1989.
13. Roderick A. MACDONALD, "Pour la reconnaissance d'une normativité juridique implicite et inférentielle", *Sociologie et sociétés*, vol. XVIII, n° 1, p. 47-58; Robert Alan DAHL, *Polyarchy : Participation and Opposition*, New Haven, Yale

University Press, 1971; Jacques VANDERLINDEN, "Le pluralisme juridique, essai de synthèse" dans John GILISSEN, directeur d'édition, *Le pluralisme juridique*, Institut de sociologie, Éditions de l'Université de Bruxelles, Bruxelles, 1972, pp.19-56; Jacques VANDERLINDEN, "Vers une nouvelle conception du pluralisme juridique", *Revue de la recherche juridique Droit Prospectif*, 1993-2, 573; Sally Falk MOORE, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study", (1973) 7 *Law and Society Review* 719-746; Jean-Guy BELLEY, "L'État et la régulation juridique des sociétés globales: pour une problématique du pluralisme juridique", (1986) *Sociologie et sociétés*, vol. XVIII, no 1, 11-32.

14. Chez Freud, le *moi idéal*, individuel il va sans dire, se définit comme l'instance "imaginaire représentative de la première ébauche du moi investie libidineusement"... *Dictionnaire de psychanalyse*, Roland CHEMAMA, dir. , Larousse, Paris, 1993.
15. Tim PLUMPTRE, *Vers un plan de recherche sur la gouvernance*, document inédit préparé pour la Commission du droit du Canada, Ottawa, 1998.
16. Notamment: Wane M. MARR,"Special Issue: Aspects of Corporate Governance", (1994) 15 *Managerial and Decision Economics* 279; Dan R. DALTON, "Focus on Corporate Governance", (1989) 32 *Business Horizons* 2; CANADIAN BUSINESS REVIEW EDITORIAL BOARD, "Special Report: Trends in Corporate Governance", (1995) 22 *Canadian Business Review* 16.
17. Notamment: Nolan J. ARGYLE, "The Impact of Collective Bargaining on Public-School Governance", (1980) 28 *Public Policy* 117; Edward MORGAN, "Technocratic v. Democratic Options for Educational Policy [Lay versus professional control of educational decision-making, and localism versus centralization in educational governance]", (1984) 3 *Policy Studies Review* 263.
18. Notamment: Henry TERINE, "Local Governance Around the World", (1995) 540 *Annals of the American Academy of Political and Social Sciences* 11; Katherine A. GRAHAM, et Susan D. PHILLIPS, *and restructuring*, Toronto, Harcourt Brace Canada, 1998.
19. Notamment: Étienne LEROY, "Le jeu des lois", Paris, L.G.D.J., Coll. Droit et société, 1999; Audrey D. DOERR, "Building New Orders of Government: The Future of Aboriginal Self-Government", (1997) 40 *Can. Pub. Adm.* 274; James S. WUNSCH et Dele OLOWU, *The Failure of the Centralised State: Institutions and Self-Governance in Africa*, Boulder, Westview Press, 1995; Lyman H. LEGTERS et Fremont J. LYDEN, *American Indian Policy: Self-Governance and Economic Development*, Westport, Greenwood Press, 1994.
20. Andrée LAJOIE, *Jugements de valeurs, le discours judiciaire et le droit*, Paris, coll. "Les Voies du Droit", Presses universitaires de France, 1997.
21. Sur les théories de la narrativité, voir: Ioannis PAPADOPOULOS, "Guerre et paix en droit et littérature", 1999 (42) *R.I.E.J.* 181-196.
22. Ricardo PETRELLA, "La dépossession de l'État", *Le Monde diplomatique*, août 1999, p. 3.
23. *Ibid.*

24. Il aurait pu ajouter: et dont la réintégration au capitalisme exigeait ce cadre conceptuel...
25. Stephen CLARKSON, "The Meaning of Continentalism and Globalism for the Nation State: NAFTA and WTO as Canada's External Constitution", à paraître en 2000 dans les *Actes du Colloque de l'Association italienne d'études canadiennes: "Le Canada et les cultures de la mondialisation"*, Bologne, septembre 1999.
26. Gilles GAGNÉ, "Les transformations du droit dans la problématique de la transition à la post-modernité", (1992) 33 *C. de D.*, 701.
27. Kenneth McROBERTS, *Misconceiving Canada : The Struggle for National Unity*, Toronto, Oxford University Press, 1997.
28. Peter J. KAZENSTEIN, (dir.), *The Culture of National Security: Norms and Identity in World Politics*, New York, Columbia UP, 518, no. 48, 1996.
29. Le cas du Canada n'est pas isolé à cet égard: l'Union européenne semble avoir un effet analogue dans les États-nations européens. Marlise SIMONS, "In Europe, a Lingual Hodgepodge", *New York Times* ***International***, 17 octobre 1999, p. 4.
30. *Delgamuukw* c. *C.B.*, [1997] 3 R.C.S. 1010.
31. *R.* C. *Marshall*, C.S.C. Ottawa, no. 26014, 17 septembre 1999.
32. Isabelle DUPLESSIS, "Quand les histoires se font globales: l'exemple de l'internationalisation des revendications autochtones", *Rapport de recherche CRDP*, Montréal, 1999, à paraître.
33. Je pense ici notamment à la réaction autochtone à l'inaction fédérale suite à l'arrêt *Marshall*, précité, note 31, au moment de la conférence internationale sur le fédéralisme, convoquée par les autorités fédérales. Mais il faut admettre que c'est la Cour suprême qui avait choisi la date de la publication de son jugement...
34. Andrée LAJOIE, *Jugements de valeurs*, précité note 21.
35. Andrée LAJOIE, Henry Quillinan., Rodrick A. Macdonald, Guy ROCHER, "Pluralisme juridique à Kahnawake?", (1998) 39 *C. de D.*, 681-720.

Photo: University of Toronto

John C. Polanyi

John C. Polanyi, FRSC

The Governance of Science

The centrality of science has led to the development of elaborate schemes for managing university research. Those being managed—of whom I am one—too seldom express their views as to the merits of these schemes. To do so, they reason, would be to engage in politics. They prefer to do science. We may honour them for their devotion to what they do, but we should blame them for their irresponsibility in failing to challenge the policy-makers.

The first step in opening a debate with government would be to come to an agreement as to the nature of university science. What is it that governments are attempting to govern?

The Narrative of Knowledge

The activity that properly defines university research is the systematic pursuit of knowledge, whether in science or in the humanities. We are not in the universities to piece together a patchwork quilt of ad hoc scraps, useful at a particular time for a particular purpose. To the extent

that we consent to construct a patchwork, we weaken the institution to which we belong.

Why is this so important? One reason is that the strength of basic science lies in the connections it makes—in the narrative. That is where meaning is to be found. Narrative is, after all, shape, and it is the shape of things that we are entitled to call "discovery."

To the extent that we relate phenomena, we provide an instrument that can be used to solve an indefinite number of problems that will be encountered in the future. It is our job to provide those instruments. When, in the interests of what is thought to be "relevance," we fail to pursue narrative where it leads, we give less, not more, value for money.

A second reason that we need the freedom for the systematic pursuit of knowledge is that our research has a teaching function. We teach less experienced people, and we teach them by showing them how to make connections. We do not teach them by involving them in the exploration of disconnected areas of science considered to be of commercial or social relevance.

For all these reasons we have to let the logic of the subject unfold. Since we are dealing with emerging fields of science, that is a demanding requirement. We should not be asked to tell the intricate story of nature while, at the same time, justifying the steps in the narrative on the basis of their socio-economic worth. To do both things well, devotedly serving both God and Mammon, is well-nigh impossible. Something has to give. The something that is giving is the quality of our universities. Thinking is being trivialized as the stories we tell become more disjointed.

I have now said something about what we should do, and why we should do it. Academic research, I have said, has as its central objective, understanding. This is the culture of the governed, in the university. We should guard it.

The Cultures of Government and Industry

In their dealings with science, governments live in a different culture; a culture concerned with encouraging innovation to improve the citizen's standard of living. This is laudable. It is especially important in the face of evidence that Canada lacks sufficient high-technology industry

capable of doing innovative research. We are unprepared for the twenty-first century.

However, it does not follow from the fact that Canadian industry is doing too little research, that we should transfer the burden of innovation to the universities. This is, in fact, a dangerous expedient, and it is one in which we have already indulged to too great a degree. A more reasonable policy would seek to create the conditions in which industry itself does more research.

Instead, what we have seen over the last fifteen years has been an ever-increasing push to produce a more managed university science, with the objective of obtaining commercial returns from academe. This has been a theme common to successive governments, of different political persuasion.

In addition to the culture of government there is, importantly, a culture of industry. Industry regards knowledge as property—something that can be bought and sold. This stress on the proprietary nature of knowledge separates industry from the universities. In the universities, as soon as a student arrives, we try to persuade him or her to share ideas. For our institution deals not in property, but in truth.

We throw our ideas into a hopper. We talk to any interested party about what we are doing, because we learn from that process and we teach through it. The free exchange of ideas is central to research and teaching in the university setting. Moreover, so long as we are funded by the public, it seemed proper that our knowledge be available to the public.

How does one mix this with the requirements for commercialisation? It is barely possible. If the culture of commerce is applied to the university, we shall need to know which student or professor thought of what, which scientific device paid for by whom was involved in enabling that thinking, and which sponsor's money went to the services and salaries that supported the endeavour. But these facilities and services, like the ideas they engender, are best shared between teachers and between students. To wall them off is to balkanize the enterprise of research, thereby weakening it.

Centres of Excellence, Versus Excellence

As if I had not already attacked enough sacred cows, I want next to express reservations about the hallowed concept of "Centres of Excellence," as currently conceived.

Am I opposed to excellence? No. But I want to suggest that Centres of Excellence are often opposed to excellence. In establishing the present "Centres of Excellence," whether federal or provincial, we give an explicit mark, not to exceed twenty per cent, to "excellence" in the selection process. We start, therefore, with a feeble commitment to excellence.

What are the other eighty per cent of the selection criteria used for establishing these centres? A variety of things which, though worthy, should be secondary. They are qualities that can be counted on to flow naturally from doing excellent science.

These criteria, which are accorded separate marks, include teamwork, networking, interdisciplinarity and management structure. These can be helpful things, but they are feeble indicators of excellence. We do not subsidize businesses for giving evidence, for example, of paying attention to their competition, since if they did not do so they would go bankrupt.

The same applies to scientists. You do not have to organize them to pay attention to other scientists, and to the broader reaches of knowledge—as the criteria of teamwork, networking and interdisciplinarity attempt to do. Instead we have learnt to reward business on the basis of success, and punish it for failure. How it succeeds, it had best decide. In science as in business, micromanagement by government succeeds only in impeding the successful, not in making failure into success.

To summarize, our increasingly managerial style of government applied to university science, plausible as it may appear, does little good at substantial cost. You will not find the new Glenn Goulds by giving marks for fingering at the keyboard, yet that is what these stylistic rules attempt to do. And it is precisely the Glenn Goulds whom we must find. Excellence is in people, it is not to be found in style, nor can it be produced by legislating style.

The Criterion of Relevance

The greatest fallacy is to think that, were we to identify excellence, we could then afford the luxury of choosing the most relevant. Excellence is what is best, and one cannot say that one will climb the highest mountain peak, and then pick which one it is to be. It has picked itself.

When, therefore, we apply the alternative criterion of relevance, we must be conscious that it comes with a price. We are going to pick people who are less excellent. We will not admit it, but that is what we will do. People will be picked who will scale a lower peak, but one which we believe has a higher cash value.

If we really could determine relevance in the context of university science, this price might be worth paying. In fact I believe that we have merely fooled ourselves into thinking that we can make that prediction.

The central economic lesson of the last century was that governments are bad at selecting those industries most valuable to, say, Ontario, or to Canada. The record of governments in picking winners in the market place for goods is dismal. Happily, the business community and the electorate, having learnt that lesson, will no longer allow them to be in charge of picking winners.

How is it, therefore, that in the market place for ideas, which exists twenty years upstream from goods, we think it profitable to have governments picking the ideas that are going to bring the greatest economic and social returns?

Matching Grants

Governments are no longer deaf to the argument that I have just been making. They concede that they have failed in micromanaging the economy. The modern way is to let industry lead. Industry we are told, should be encouraged to point university research toward outcomes that are commercially advantageous. So we have schemes with "matching grant" requirements: if you want federal or provincial research support, you should first persuade industry to provide a chunk of the money.

I do not see this as solving the problem. It puts the burden for long-range prediction on industry, it is true. But industry cannot see far ahead either. Industry is fighting an immediate battle to survive in a

competitive world. Its horizons are short. It can be expected to pressure the universities to exploit existing knowledge for short-term ends. For only then can it be assured that it will benefit itself, rather than its competitors.

But this short-term focus interferes with the development of science, as I have described it, according to its own logic. It forces university scientists to place utility ahead of meaning. It detracts, therefore, from the purpose of the university.

The Present Danger

Am I exaggerating the danger? At first blush the numbers may suggest that I am. Let us look first at the US—the world capital for fundamental science. The absolute amount of university research that is funded by industry in the United States (on average) has remained constant at five to six per cent of the total for at least fifteen years. This is a small percentage. But it has been kept so small there, for good reason. If the percentage were larger, it might steer the rest of the science being done in US universities.

Scientists would then begin shifting their priorities so as to win out in the competition for the industrially-matched funds. Additional funding is universally attractive. Five to six per cent of a large total is a lot of money. By tapping into industrially-oriented research, ambitious scientists have a further place they can go for a substantial increase in funding. But it is not the place that the US wants its most venturesome scientists to go, since it would leave them less free to make fundamental discoveries.

Surprisingly, in Canada, we have twice as much of our university research funded by industry as in the US; the average is currently almost twelve per cent. This, despite the fact that our industries tend to be "low tech." We have four times as much of our university research funded by industry as in France, and six times as much as in Japan. These numbers, moreover, understate the case, since there are large new matching-fund schemes that are in the process of making the disparity between our practice and that in the countries with which we compare ourselves, still greater.

There is, therefore, reason to be alarmed. I see it myself in my research life. People are spending too much time wooing industry. The pressure on them to do so comes less from industry than from governments that insist, in virtually every new funding scheme, on "matching grants." Yet the conventional wisdom of those who are making these rules is going unchallenged.

The result is a steady increase in research that enfeebles the universities. It does not fulfil the criterion that I introduced at the outset, since it more closely resembles the making of patchwork quilts, than the pursuit of narrative. It lacks, therefore, its full portion of meaning.

The Fear of Irrelevance

But how do we avoid doing excellent work that later turns out to be irrelevant, the government asks? My response is that excellent work can be depended on to be relevant. The scientific community has for many years past been in charge of policing its activities so as to favour only excellence. And science conducted according to those principles has changed the world—changed it beyond recognition. What we should watch out for is not a plague of irrelevance, but too much relevance.

Often I find myself in front of audiences concerned that every time a scientist has an idea, disaster strikes. That is not so, but it stems from a more justified fear than that of irrelevance. Science has, in the course of the past century, changed our ideas of what matter is, what time is, and what life is. These questions are pivotal, and by no stretch of imagination irrelevant.

The fear that somebody may provide intellectual tools of great power that are useless, is not one that I share, and not one that history supports. Of course, we can ourselves make science irrelevant if we persist in ignoring where its power lies. By enfeebling science we do indeed make it increasingly irrelevant. By excessive government, we shall, therefore, bring about the very consequence that we seek to avoid.

A Dangerous Document

There is a recent Canadian report, which you can find on the World Wide Web (http://acst-ccst.gc.ca), in which a group of experts discuss the

commercialisation of university research. This report, by the nation's "Expert Panel on the Commercialisation of University Research," is dangerous.

The report has been approved by the Prime Minister's Advisory Council on Science and Technology, and is set therefore to move to higher levels of government. It contains the recommendation that "innovation"—defined as the process of bringing goods to market—be made a central function of the universities, on a par with teaching and research. That can only be done by altering the universities, and in the process damaging them. Ironically, it will work against the things that industry most values in the universities.

Why is it, in fact, that industry comes for assistance to the universities? They find there knowledge that has been explored systematically, and they hear voices that are credible. Not credible just because university researchers are broadly informed, but because they have a large measure of independence from government and also, till now, industry.

This report's recommendations, if implemented, would tend to rob the universities of their credibility as independent sources of advice, by blending their purposes with those of industry. Industries would no longer, therefore, have the same powerful reasons for consulting university researchers.

Over several centuries, governments have been persuaded that it is in the interest of the public that university research should have its own distinctive priorities. This is what we mean by an arm's-length relationship. The first priority of governments, after all, is to govern. The first priority of universities is to pursue and propagate the truth. These are different activities.

The maintenance of an arm's-length relationship to governmental sponsors is today, as in the past, a continuing battle, but it is a battle which we can hope to win. The time has come to make the point that the value of the universities depends on sustaining a similar arm's-length relation to industry. The priorities of both university and industry are valid, but they are different. With the erosion of that difference, both university and industry suffer.

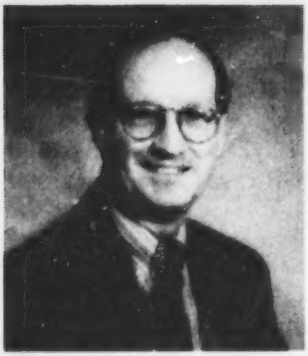
Praise—and a Caution

I may have painted a bleak picture. Let me end on a note of hope. True to my Cassandra-like proclivities, I couple that with a warning.

In the Throne Speech of October 13, 1999, you will find highlighted a proposal to attract "research stars" to Canadian universities so as to convert the brain drain into a brain gain. This is far-sighted and necessary. The instrument which the government proposes to use for this is a good one: it is a scheme called "Twenty-First Century Chairs for Research Excellence." Ultimately this is intended to amount to two thousand new research chairs.

I see here an acknowledgement of what I have been saying, which is that we are dependent on the vision of our outstanding scientists and scholars for the advancement of research. We are dependent on the qualities of these individuals—on their excellence. Everything else is secondary.

Now comes the warning. We must ensure that this far-sighted initiative is not wasted. The outstanding individuals whom we are about to support must be left free to make discoveries where nature allows, rather than being required to do so where industries prefer or governments permit.



Douglas E. Angus

Photo: John Evans Photography Ltd.

Monique Bégin

Douglas E. Angus

Monique Bégin, MSRC

Governance in Health Care: Dysfunctions and Challenges

Abstract

We will discuss governance in health care from the perspective of three important dysfunctions: the current negligible role for "patients" [the raison d'être of the system]; organizational structures [particularly the "silos" approach in ministries of health which prevent integrated delivery of services]; and key decision makers [physicians] who are connected in only a very limited way to policy making, administration, and budgets. Among the many challenges that exist are determining ways to connect physicians to the system's dynamics, developing organizational infrastructure and incentives to actually integrate services, and establishing formal roles in governance for patients who, in reality, are also citizens, taxpayers, and the public.

Résumé

Il s'agit d'une réflexion sur la gouvernance du système des soins de santé canadien axée sur trois importantes dysfonctions contemporaines : le rôle négligeable dans lequel sont cantonnés les utilisateurs et les citoyens, par ailleurs la raison d'être du système; la structure organisationnelle, tout spécialement la division des ministères provinciaux de la santé en « silos » qui bloquent toute intégration des services; et la relative absence des acteurs-clés que sont les médecins de la prise de décisions en politiques et programmes, administration et enveloppes budgétaires. Pour affronter ces défis, nous devons donc, comme société, déterminer la façon optimale de réintégrer les médecins au système dans un rôle dynamique, développer des infrastructures organisationnelles et et des incitatifs en vue de l'intégration réelle des services, et établir une participation formelle des patients, des citoyens-contribuables et du public à la gouvernance du système des soins de santé.

Introduction

In reality, no one is in charge of our Canadian health care system. No one single player controls it. In fact, it would be more accurate to speak in the plural of our ten—more precisely thirteen—health care systems, since they are provincially and territorially based. Yet, the first statement is not completely erroneous and this communication intends to discuss governance issues as they apply to our national health care system. We will present our views on the dysfunctions and the challenges of governance at both the macro and meso levels.

What do we mean by governance? Governance is both the act and/or the result of the dynamic interactions in interconnected structures which keep a domain of human activities "going". Gilles Paquet gives this definition from Kickert, "governance is the achievement of a balance between governing actors" (Kickert 1993: 195). Paraphrasing Paquet himself, governance is a mode of social coordination referring to a pattern of relationships that is likely to emerge rather than be crafted and that is providing the stakeholders with an opportunity to partake collectively in the process of steering of the organization (Paquet 1999 a,b). Ou encore: la gouvernance réfère aux patterns qui émergent de la combinaison et de la réconciliation des actions stratégiques des divers acteurs et groupes d'un système et qui en influencent l'orientation, voulue ou non (Paquet 1998: 3). Another way of considering governance is that it "is about mandates, responsibility, and authority on the one hand, and incentives, rules, and monitoring on the other" (Purchase and Hirshhorn 1994: 14).

To apply the concept of governance to the health care system, let us first identify the actors on the stage. The various health professions are the most visible series of players: physicians, nurses, rehabilitation experts, hospital administrators, to name the most known. When thinking of bureaucratic organizations, Health Canada, provincial ministries of health, regional health authorities or district health councils, CLSCs or other community centres and infrastructures come to mind. Then, further behind the scene are provincial health plans: OHIP, RAMQ to name two. Other boards will include regulatory bodies of all kinds. Then there are hospitals, clinics, labs, in both the public and, to a much lesser extent, the private sector. Also important actors are the pharmaceuticals

and the medical devices private corporations. Looming behind the curtain, the invisible driving force of the whole system is of course high tech medicine itself, an institution growing at an exponential rate. And finally, somewhere is the public, as patients, as citizens or as taxpayers.

Except for the public, these actors are all hierarchically organized internally, while more or less set, and complex, relationships govern their interactions between themselves, in bilateral or multilateral dealings. The governance of the health care system, in our country, is rooted, however, in the constantly renegotiated and fragile equilibrium among three of the major stakeholders: the provincial governments, the federal government and organized medicine. None is over and above the others; none has control of the system. Each can disrupt it seriously, yet all are needed to make it function smoothly. Nowhere in this hierarchy is the citizen, as patient, considered seriously, except as passive recipients of health care services.

For the past thirty years, this model has served Canadians quite well. But in the last part of this century, important dysfunctions have started to appear which threaten both the equilibrium and the efficiency of the system. A most powerful actor, organized medicine, is, for whatever historical reasons, reduced to bargaining for more money for its members, holding tight to the inappropriate fee-for-service mode of remuneration of physicians. It is almost completely disconnected from any collective decision making, responsibility and accountability for what goes on in the health care system. As to the provincial/territorial ministries of health, the official bodies in charge of health care in Canada and another very powerful player, they have rigidly organized themselves by "silos", blocking for all practical purposes any effort at integrating services, developing new ones, readjusting budgetary envelopes and moving with the times. Regrettably, after a decade of internal reconfigurations, Health Canada is still deeply destabilized, and it appears that nobody knows where the department is going and what it intends to do. As to intergovernmental relations, best expressed through federal-provincial conferences, they are fundamentally conducted on an adversary system model where cheap health politics take over common policy development, and where opposite parties deny each other credibility in health care objectives. Finally, those who should be at the centre of the

equation, the patients and the public in general, have no voice and no role.

1. Reconnecting Physicians

Physicians are the one single actor with power, status and prestige in our society. Historians will one day document the reasons that organized medicine did not play a significant leadership role in health care. In the mean time, some researchers (Freddi 1989) have suggested that physicians did not become part of the system of governance primarily because of their attachment to the concept of "autonomy". Generally, physicians perceive autonomy to hinge around four broad issues:

(1) fee-for-service remuneration ("private entrepreneurship");
(2) the right to independent practice, i.e., a highly individualized doctor-patient relationship ("clinical autonomy");
(3) responsibility to lead and coordinate other health care providers ("leadership"); and
(4) the right to use professional association (i.e., a social consensus model), as opposed to the adversarially based unionization approach, to resolve problems ("control of the profession") (Freddi 1989: 5-9)

While the fee-for-service model is conducive to autonomy, it rewards processes and not outcomes. It also contributes to fragmentation and duplication of services, little emphasis on preventive care and health education, and to brief office visits and physical examinations (Livingston 1998: 270). Furthermore, in such a system, physicians usually do not delegate functions to other health care providers as much as do physicians in capitation and salaried environments (Saltman and Figueras 1997: 159). Since physicians account directly for about 15% of health care expenditures, but control 80% of those expenditures (Rachlis and Kushner 1994), it is surprising (and perhaps even distressing) that they do not play a larger role in the governance of health care. Perhaps physicians' attachment to the concept of autonomy helps explain part of this phenomenon.

Further hindering their role in governance is the fact that physicians function (at best) in a limited managerial capacity in hospitals, where today's health care delivery is a "complex endeavour which inevitably takes place in a more or less formally structured organizational environment" (Freddi 1989: 22-23). Furthermore, since doctors act as agents on behalf of patients (hence, being both suppliers and demanders of health care), and since most physicians are reimbursed on a fee-for-service basis, perhaps this agency role makes it difficult for them to establish their appropriate place in health care governance, or to bear any significant degree of managerial and financial responsibility for their clinical use of health care resources (Saltman and Figueras 1997: 41).

Another aspect of modern health care is the fact that virtually all industrialized countries (even the US) have significant levels of public sector intervention (for funding, provision of services, or both) in health care. As a result, governments in most of these countries have grappled with the question of how to control costs without jeopardizing the health of the population (Freddi 1989: 23). Not only are governments sensitive to health care expenditures, but so, too, are the private third-party payers: perhaps the latter are even more cost-conscious.

One of the major tools used by governments to control health care costs is regulation. While regulatory measures have been effective, especially regarding hospitals and pharmaceutical expenditures (Saltman and Figueras 1997: 42), governments are realizing that regulation needs to be flexible and be concerned with monitoring and evaluating outcomes, not just with determining the inputs. For this to occur, all of the key actors important to governance need to be explicitly involved. The role of government here is critical, but what seems to be happening is that governments are drawing back from their involvement in health care when, instead, they should be playing a more active (but perhaps different) role with the other parts of the health care sector (Saltman and Figueras 1997: 42).

Thus, if health care is delivered in increasingly complex environments and if governments do play a significant role in funding the system, is the view of clinical autonomy, especially from the narrow perspective of "individually independent practice" still valid? If the current fee-for-service payment system is dysfunctional to achieving

effective governance in health care, then what needs to be done to improve the situation? With respect to the first question, the answer likely is that in today's (and tomorrow's) health care environment medical autonomy, particularly with respect to professional relations and interactions in this complex milieu, is archaic and soon to become obsolete (Freddi 1989: 23). The one important element of medical autonomy that must be maintained, however, is that which is exemplified through the delicate patient-physician relationship, and in which medical expertise and judgement are essential to quality medical care. Regarding the second question, it seems that, whatever governance structure is developed, it will have to be capable of addressing a number of simultaneous health care objectives, i.e., the efficient use of resources, accessibility to patients, high quality comprehensive and coordinated services, a broad-based population health approach, choice for patients, professional and managerial accountability for health care providers, and ease of implementation and operation (Saltman and Figueras 1997: 152).

As a result, the question that physicians, decision makers (public and private), other health care providers, and patients (as citizens, taxpayers, and consumers of health care) need to ask is: "Which type of organizational rationality is more hospitable to the requisites of medical decisions and work processes" (Freddi 1989: 23), as well as budget realities and patient (population health) needs? While there is some debate as to the level of involvement of physicians in governance (Forest et al. 1999), a guiding element that might be considered in establishing the most appropriate governance structure is similar to that where "judges are granted independence not for their own gratification but to protect the citizenry from arbitrary and capricious actions, so the requisites of medical professionalism are inherently valid only as long as patients' care is the central objective (emphasis added)" (Freddi 1989: 25).

2. Integrating the Delivery of Services

As is evident from the previous discussion, nothing could be done in the health care sector without some form of assent on the part of physicians (and, less so, nurses). The question is how to make them support a system of governance and commit themselves to its success? Part of the answer may lie with the current emphasis on developing "integrated

delivery systems" (IDS) in health care. In view of the serious fragmentation in health care, often referred to as the "silos" system, integrating services, or developing a continuum of services for the benefit of patients, has been perceived as a potentially effective way to improve accessibility to, and quality of, health care in Canada. When we talk of silos we refer to the situation existing in virtually every jurisdiction in Canada. That is, not only are ministries of health isolated from other relevant ministries (e.g., community services, social affairs, welfare, housing, etc.), but internally where branches are separately budgeted and operated for medical services, hospitals, pharmaceutical benefit plans, long-term care, home care, public health, etc., there is significant and (often) counterproductive fragmentation. As a result of this emphasis we are beginning to see the emergence of more inclusive health systems, multi-hospital networks, and multi-site hospitals, in addition to the continued single site organizations. What the "integration of delivery services should mean is that every step of the process of care, from prevention to home care, must be part of the provision of services. They should be integrated and managed together ...[and be] appropriate to the needs of the citizens" (Forest et al. 1999:12).

Whereas the governance of single organizational entities has been well established, the shift to IDS has made it obvious that "traditional governance structures and management processes in health care are outmoded" (Forest et al. 1999: 12). Since the role of government in health care is changing, and since the role and functions of physicians must adapt to changing realities, good governance in IDS has to be considered as a coordinated decision-making process that involves public institutions together with health care providers and citizens.

Because IDS are such a new concept in health care, there are few "working" models of governance in Canada on which to build. Fortunately, with such establishments as the Mayo Clinic and the Kaiser Permanente Health Maintenance Organization in the United States, there are some models that Canada could consider. What has to be done is to identify the major characteristics and factors which lead to good governance of such systems. As Forest and his colleagues (1999) and Purchase and Hirshhorn (1994) point out, similar to centralized single entities, networks must also address the following key characteristics:

(1) clarity of purpose or focus on outputs—if organizations and people focus on clearly specified goals, instead of process and inputs, accountability will be easier to realize;
(2) transparency and constraints—from clear and specific objectives benchmarks (for cost and quality), as well as a set of rules that govern behaviour, can be established against which to measure performance, all of which implies accessibility to reliable information;
(3) incentives—in order to achieve desired objectives, appropriate incentives for superior performance (as well as sanctions for poor performance) must be implemented. Important, those who do the functions to achieve the objectives have to be part of the decision-making process;
(4) link costs and benefits—to reinforce the previous objectives, it is necessary to connect the decision makers to the results or outputs. The current system provides few such linkages for health care providers or patients;
(5) commitment and loyalty—corporate IDS "cultures" (common values or professional ethics) are also important to develop constructive interpersonal and inter-organizational behaviour; and
(6) fairness—trust, particularly of governments, is essential to the success of new IDS networks. Since they have the power to change contracts unilaterally and to make dramatic and unexpected changes, governments need to develop and foster a social consensus, especially if they want to play a sustainable role in health care (Purchase and Hirshhorn 1994; Forest et al. 1999).

And, at the level of managing health care resources, the provincial government is still a necessary partner, "but rather than imposing order and issuing directives, its role should be more to steer and guide, giving leadership and protecting the public interest, when needed" (Forest et al. 1999: 8). As will be suggested later, both the federal and provincial governments must understand this imperative, and take on greater responsibility in this regard. Within any given IDS the governance structures will adapt to these characteristics in different ways.

What, then, makes for "good" governance in integrated health care? At one level, good governance here is not at all different from good governance elsewhere. With respect to integrated delivery systems, Forest et al (1999) suggest that there are two dimensions to consider: degree of autonomy, and range of concerned stakeholders. Regarding the former, good governance falls somewhere in the spectrum between, on the one hand, decision making being totally with the IDS where regulation is characterized by a variety of transactions and agreements among local groups and organizations, and on the other hand, authoritative decision making where regulation of health care providers is characterized by the imposition of rules and incentives. Regarding the stakeholders, good governance again falls somewhere in the middle of the continuum between control of orientation and strategies by traditional stakeholders and a high degree of sensitivity to community-based pressure groups. In such a framework, "good governance" is a state of affairs where meaningful participation fosters continued engagement and every joint responsibility on the part of every constituency, "in each stage of the policy process, from decision-making to implementation, from monitoring to revision" (Forest et al. 1999: 18).

3. Federal/Provincial Decision Making

Since the Canadian Constitution Act, 1867, health is considered of provincial jurisdiction. This did not change with the patriation of the Constitution from England in 1982. History, however, involved the federal government as a partner in the health care system with Prime Minister Mackenzie King's 1945 "Reconstruction Conference", when assistance towards a national and universal health care programme was first offered to the provinces. Then came the foundations of the Canadian "medicare"—the Hospital Insurance and Diagnostic Services Act (1957) and the Medical Care Act (1966), followed more recently by the Canada Health Act (1984). Today, with a few exceptions (aboriginals' and veterans' health; drugs administration, etc.), health services in Canada—hospitals, community health centres, doctors services and remuneration, health professionals regulation, education and training, etc.—are planned, administered (and paid for at around 75%) by the provinces, with the help of still substantial contributions from the federal

government, provided five basic conditions are respected. If we refer to a recent typology of competencies, health is a Type II competency: "les compétences provinciales exclusives reliées de près à l'union économique et sociale" (Burelle 1995: 148)

Against such a historical background and further to the federal nature of Canada, it is therefore important to have functional and meaningful working relationships between the two levels of governments. What are the tools at their disposal to do so? Besides interpersonal communications by middle management officials, assistant deputy ministers, even deputy ministers at the two levels of government, the mechanisms used are the annual federal-provincial conference of deputy ministers of health; the annual conference of provincial health ministers (at which the federal minister might be invited for a session); and ad hoc federal-provincial conferences of all ministers of health—usually convened at the request of one of the parties, often the federal minister. It is not easy to assess which technique works and which does not, for very little is ever made public of the deputies' conferences or, besides a nice, well-intentioned joint communiqué, of the provincial ministers' ones. Federal-provincial conferences of ministers, on the other hand, especially if they have not been successful, are well covered by the media and are what the public hears about. This then speaks to an apparently dysfunctional tool of cooperation and it is true that, at times, federal-provincial conferences can be quite disappointing, not to say hopeless.

Why is that? Several elements come into play, the first one being the intrinsic conflicting nature (but not necessarily adversarial as in parliament or legislative assemblies) of these conferences, in a field of provincial jurisdiction but of historical joint partnership with the federal government. Another one is the obvious imbalance in the rapports de force between individuals: ten provincial ministers (plus three territorial ones) and only one federal minister, especially against the background of the remarkable growth of provincial power and authority of the 70s. Other elements of the equation include clearly opposing political ideologies and their corresponding values (issues of universality, of public-private mix, etc.); serious tensions between the four rich and large provinces and the six others, as well as any other particular aspect of regional

disparity; personalities; and political parties' competition for the voters' approval.

But it does not follow that situations of conflict and tension are of necessity dysfunctional. Many such conferences have been quite successful, enabling political analysts to develop the thesis of "federal-provincial diplomacy and negotiation" (Simeon 1972) as a Canadian success of federalism, especially during the thirty years following WWII. Then, "The institutions of federalism were not simply the arenas within which political conflict took place and through which they were mediated. Rather, the institutions themselves were in question; they were the objects of the conflict." (Simeon 1987: 264) But, by the mid-80s, the bitterness and mistrust engendered in the previous decade were both heightened and challenged by the economic crisis. History will have to judge if "(relative) scarcity and governmental restraint" will have been a centrifugal or a centripetal force in federal-provincial relations. (Simeon 1987: 263-273)

In today's joint conferences, observation reveals that in matters of human resources, social or health policies, broadly defined, ministerial federal-provincial conferences can work and have been working, provided certain conditions are respected. Good faith on the part of all, but even more so on the federal side, is a must. When the players manage to overcome politics and agree on the importance of the issue to be resolved, or the concern or the policy at stake, ministers have been able to truly work cooperatively and come to a consensus for the common good. Of course, if the federal side can contribute money to the initiative, the better. No need to stress the importance of remembering that health care (or human resources, or social policy) does not exist in a budgetary vacuum; anything "done" to the provinces through broader federal financial/fiscal policies will serve or block the issue under consideration. Real or perceived unilateral cuts in direct or indirect financial transfers are a major impediment to successful joint conferences. But above all, what is definitely hindering their success is the active participation of intergovernmental affairs officials "guiding" or instructing provincial ministers (or the federal one) as to what is acceptable and what is not, for it turns the process into a competitive constitutional match at the expense of the problem under consideration.

What the future holds for the good functioning of health ministers' federal-provincial conferences, especially in regard to the health care system, is not clear and depends on the evolution of governance in federal-provincial relations themselves. In *Le mal canadien*, a European-style Council of First Ministers, with decision-making power and the double mandate of conflict resolution between the two levels of government and of joint decisions on matters pertaining to the economic and social union is suggested. (Burelle 1995: 164). Then came, on February 4, 1999, the agreement on the Canadian Social Union, between the federal government and the provinces and territories except Québec. The concept of a European-style Council of First Ministers, an in-depth reform of the actual power structure, is worth serious consideration. It is not known if it was on the table during the negotiations that led to the Social Union, transparency having not been the trade mark of that process. A key test in the operational translation of the Social Union agreement will be how it applies to the case of The Canada Health Act (1984). What the provinces repeatedly proposed is well known. They want to enforce the federal legislation among themselves, a politically flawed proposal and an extraordinary challenge for Parliament.

This section focused on federal-provincial interactions regarding the health care system. Power structure changes inside provinces, however, also have the potential to profoundly change the governance of the health care system in Canada. Devolution of budgetary responsibility and of decision making to regional/local health authorities as is the case in Alberta, or in Saskatchewan and in Québec, a move strongly resisted by other provincial governments, obeys "the principle of subsidiarity"—power should be devolved to the most local level that can reasonably make decisions for the citizens (Paquet, 1999: 75). It will be important to analyse its consequences both from a cost-control angle and in terms of the principles around which our health care system has developed: accessibility, universality and quality of care for the patients. At a theoretical level, if "subsidiarity" is a rich concept, it raises a few questions based on the practice of politics. The obvious one relates to what appears as a paradox: if the most local level is, for moral and other reasons, the best level of delivery of services, why is it that municipal and school board elections register such low voters' participation? A

second question turns the challenge around, applying it to the federal government, the farthest from citizens' daily life: if health responsibilities were to be completely devolved to the provinces, would there be enough significant daily life issues left on Ottawa's agenda to maintain citizens' strong commitment to their federation?

4. Public Participation

That the Canadian public holds dearly its health care system is by now almost an old cliché. Every politician in our country knows that, polls after polls, "medicare" ranks as the No. 1 government programme. It is the public that saved "medicare" from physicians' extra-billing and institutions' user fees in the early eighties. Yet, besides expressing themselves "at the margin" through public opinion surveys or general elections, or through what appears as special interest groups, people in Canada have no way of participating in the governance of their health care system.

When it comes to health care, what exactly is "the public" made of? Experts and health professionals alike refer to "consumers" or to "clients", two definitions completely foreign to the Europeans. The history of ideas behind these cultural borrowings from our neighbour to the south has been documented by Gina Feldberg and Robert Vipond who conclude that, in our society, people are neither health care consumers nor clients. As they wrote: ".... the existence of a publicly funded health care system in Canada stems from a conception of citizenship (our underlining) that differs in significant ways from the American." (Feldberg and Vipond 1999: 61) It probably also explains why, despite its laudable efforts, the Consumers' Association of Canada was never much of a player in health matters. It surfaced during the discussion of the Canada Health Act (1984), but it released its Policy Statement on Consumers and Health Care only five years later, on September 23, 1989. The notion of consumers and consumerism as understood in Haug and Lavin's 1983 sociological analysis of their national survey of medical consumers and physicians in the US does not really apply here (Haug and Lavin 1983: 239). Health is not a consumer good, something people can acquire or purchase. Those at the receiving end, so to speak, of the health care system are patients, not clients, not consumers.

For obvious reasons—sickness, pain and eventually death—patients have barely been voices in the health care system. From time to time and through one vocal individual, patients' associations have played a role over a short period of time as, for example, the late Claude Brunet, of Québec's Le Regroupement provincial des malades. More recently, so-called survivors' networks—of AIDS and breast cancer particularly—have grown, adopting a proactive advocacy role. Both conventional patients associations and militant survivors networks have historically focused on self-help and/or increased research funding, and, at times, limited single-cause services and programmes. Contrary to more conventional groupings of patients, their families and friends—such as the Canadian Cancer Society or the Heart and Stroke Foundation, to name only two—advocacy groups are also requesting fuller participation in research decision making. The problem, from a governance viewpoint, is that these patients' groupings, because of their single disease focus, appear to be defending vested interests by opposition to speaking for the common good. This may seem an unfair judgment about dedicated volunteers working out of personal and deep conviction, but it is certainly the perception of most policymakers.

If we now turn to other cross-sections of the general population, two sub-groups would have the potential and the motives to play an active role in health care issues: the elderly and women as distinct constituencies. Well organized, having both the time and the knowledge, senior citizens should have, if not an official place, at least a major influence in health matters. Surprisingly, this is not the case. As to women, who also enjoy numerous well-organized associations, health concerns or issues touching the health care system have not been on their collective agendas except in an ad hoc fashion. The one women's voice heard from time to time over the last twenty years has been that of the more radical women's health movement. Besides its powerful feminist (and humanist) critique of medicine itself, it has generally been advocating health promotion and prevention, and, recently, it has focused on the socio-economic determinants of health. More a counter-force at play than a member of the cast, today, the limit to its action lies in its very nature: no longer a social movement, not (yet) an organized structure integrated into the system.

We can therefore conclude as to the relative absence of both the patients and the public from the scene. Although the more authoritarian and homogeneous society we used to be might not have noticed, today's very diverse, fragmented and more egalitarian Canada will not want to continue on the same path. This negligible participation of the public is not only morally wrong, but it is completely dysfunctional. What participation should be urged? Since accountability is also a component of governance, citizens' participation could start there. As it exists, the health care system is not truly accountable to the very people that are its *raison d'être*: the users and, ultimately, the public. They are the great absents in any health care debates and decisions. The one exception, as was pointed out, in which citizens/taxpayers can play a role at a macro level is through the electoral process, when a government is defeated, amongst other factors, on, say, cuts to health care, as was recently the case in Nova Scotia and in Manitoba.

A serious impediment to proper accountability in health care services is the major imbalance of its power structure. Right now, there is no balance between the power of those who have a direct professional vested interest in the health system and those whose vested interests are to be its users and taxpayers. Nor is there a balance between the power shared between the health care providers. The triad at the top of our health care system as described earlier excludes the vast majority of health care workers; it excludes the pharmaceuticals or any other health-related industry; it surely excludes the users and citizens in general. To restrict the process of steering the health care system to the three traditional major stakeholder groups (provincial governments, federal government, and organized medicine) will not permit the shift and innovations needed in the system, nor will it permit any serious accountability.

The case of users' participation in the health care delivery decision-making process, or in its performance evaluation, raises, however, a unique challenge. Let us compare the potential for accountability to the public in education and in health, the two pillars of public policies in our societies. While we have all been to school, and have a sense of what the system is all about, relatively very few citizens have to use the health care system at any given point in time. Excluding maternity experiences,

lived as unique and dramatic individual events, not that many have ever been to a hospital, except for visits to others or when they themselves were aging and were in need of hospital care. Moreover, while schooling is lived as a collective experience, illness is lived as a lonely and very individual event. If the education system is somehow authoritarian, under the guise of efficiency and experts' knowledge, the health care system is extraordinarily authoritarian and hierarchical. The very special aura attached to physicians' expert knowledge adds to their quasi-magical authority over pain, suffering, life and death. None of that exists in the case of schools and teachers. Teachers could be anyone of us. So the distance—in the need for information, for learning—to be bridged between the providers and the users when it comes to health care is a huge one.

Involving the community in governance is a complex task. Yet, in spite of this complexity, citizens "must be associated with the governance process, where they can play vital roles: on the one hand, helping to develop a broad, non-parochial view of the organization; on the other hand, using their deep understanding of their own membership and of its specific interest" (Forest et al. 1999: 12).

The challenge for governance experts is to suggest ways of giving citizens a formalized voice in health care. One such approach could make use of the concept of a health care "report card". There coexist at least three very different definitions of the concept: a consumer's guide assessing practitioners, institutions and services; a report on objective performance measurements of the system; and an annual report on the health status of the people of Canada. The latter concept has tremendous potential, for it expresses outcomes in the state of health of people in Canada—the very reason why countries invest billions in health care systems—not in professionals' or institutions' performance. To have any validity, this last type of "report card" would have to go beyond averages and means, giving desegregated statistical data, accounting for the most vulnerable sub-groups of the population.

If such a report card on the health of Canadians could result from grassroots action at the local level by concerned citizens assisted by experts, it could also be the result of a more formal initiative—a National Council of Citizens for example. Not a research institute, nor a

bureaucracy. A council made of wise, concerned citizens, an independent body whose reports should not be "cleared by the Minister's office", one that develops credibility and clout, and tells it the way it is. Innovative work in governance is required on an appointment mechanism, on reporting lines and on dissemination. Such an initiative would be challenging, controversial, difficult to design and implement, but it would give voice to the power of the weak.

Conclusion

We have identified four major areas of dysfunctions—total or partial—of our health care system and the challenges they suggest. Several others could also be listed: a legal framework, the Canada Health Act (1984), not really enforced and based on outdated concepts of health care; the underutilization of the largest group of health care professionals, the nurses; the need for a comprehensive and systemic information highway in health care matters, to name only a few.

To achieve workable governance models in health care which encompass such aspects as appropriate payment mechanisms, for example, the voyage will not be easy. Since this issue faces all jurisdictions across Canada, this is an area where the federal government has to provide leadership and to identify solutions to common problems. However, at the same time, it has to be a major responsibility of provincial governments. Furthermore, it must be recognized that payment systems are only one among many factors affecting the behaviour of physicians. And, it also should be borne in mind that, if doctors are paid less than they believe they deserve in relation to similar professional groups, they will behave in opportunistic ways to narrow the gap (Saltman and Figueras 1997: 163).

How do we bring about changes in governance? First, by considering four significant and strategic contextual elements in this process: macroeconomic situation, political environment, societal values, and external influences (Saltman and Figueras 1997: 249). The stakeholders whom we have been discussing (especially the federal and provincial governments) need to really understand Canadian social values vis-à-vis accessibility to and quality of health care. Then, if Canadians want improvements in these areas, the policy makers and providers need to

demonstrate that these fundamental social values will be shared and widespread. That is, government, doctors and patients can work together to establish the governance foundation upon which to build a viable health care system for the future. But, as also suggested earlier, this will require a sense of vision and leadership which, at the current time in Canada, are "missing in action". In our section on integrated health care, we indicated that this will require, in addition to leadership, a combination of (at least) regulations/legislation, financial incentives, and constraints/sanctions, all of which are shared responsibilities between the federal and provincial governments. Factors which will influence the process of implementation are clear and specific objectives, benchmarks and supporting information, linkages of costs to benefits and of stakeholders to outputs, and fairness.

As to federal-provincial relations in the health care system, where interdependence is key, they seem to be taking place as if time was suspended. Some meetings end in positive results, others are non-productive. A major contributor to this state of affairs lies in the uncertainty of future fiscal arrangements and potential new financial contributions from the federal government at a time when the health care system finds itself at a major crossroad of much needed reforms and reorientation, including eventual new national "home care" and "pharmacare" programmes.

The roles that the stakeholders play in health care are also critical. Curiously, to say the least, the views of one of the most important actors—the citizens—are often lacking: that must change. It should be obvious to decision makers by now that broad public support can be an effective catalyst for change, just as the lack of it can be a major hurdle. One way that both the federal and provincial governments can facilitate citizen participation is through the health care "report" process suggested earlier. This is not to discount the roles that other groups (professionals, policy élites, and interest groups) can play as either facilitators or obstructionists, but only to indicate that, for far too long, citizens, have been "left out of the loop" in health care governance.

Evidence appears to suggest that mixed payment systems for physicians, especially capitation, are more successful than fee-for-service and salary in combining important governance objectives of efficiency and

equity in health care. Yet, it also is recognized that while mixed payment schemes allow more objectives to be realized, some trade-offs remain inevitable. These trade-offs need to be made more explicit and transparent. In a system where governance and accountability are clearly specified, this should be easier to accomplish (Saltman and Figueras 1997: 162).

What can governments do, especially since we have indicated that they have a significant role to play in health care governance? Without a doubt, the federal government must assume an important catalytic role here. Students of health care know that, once the example of population-wide health care coverage was established by Saskatchewan, universal publicly-funded health insurance in Canada became a reality only because of the federal vision, will, action, and perseverance. While the external environment for health care has changed considerably during the past few decades, this does not mean that the federal government should relinquish its leadership role. Positive signs in this regard during the past few years have been the federally-initiated National Forum on Health (although there is some feeling that this mechanism could have gone much further than it did), and recent announcements of innovative thinking and increased spending for health research. Yet, there also are worrisome indications of which we should be aware. For one thing, the provincial/territorial governments are attempting to limit (and, perhaps, even eliminate) federal involvement in health. Instead of allowing the fundamental principles contained in the Canada Health Act (1984) to be neutered, the federal government must stand up and be counted. By taking a stronger leadership role, by creating innovative governance models that involve all the key stakeholders, especially citizens, and by insisting on transparent process (as opposed to closed-door sessions between governments) the federal government could be taking an essential first step in creating a much-needed vision for health care in Canada, while at the same time protecting the principles upon which the current system is built (Angus 1997: 215). At the same time, the provincial governments must find ways to include the federal government in the overhaul of governance in health care. Excluding or, worse still, "neutering" the federal government is not in the best overall interests of Canadian society.

What concrete directions, then, must the federal government take in this regard? First, reestablish lost trust and social consensus, by assuring financial sustainability and support, and by recognizing that change will likely require an infusion of extra resources. Each major level of government "must communicate to its citizens exactly what it will continue to do by way of health investment (including complementary social support programs)" (Angus 1998: 10). Next, show firm government commitment to effective change. This can be done through establishing alliances of governments, people, organizations and agencies that support such change. The federal and provincial governments need to see themselves as real partners with the other stakeholders, especially citizens, who need help, rather than simply as funders and regulators. Without this, a political vacuum will leave the door open for special interests to set the agenda. Third, do not ignore the public's view. Citizens are not idiots: they must perceive a genuine problem and a need for change, and (important) be offered credible solutions. Again, both the federal and provincial governments have to explain the difficult trade-offs between generations and between objectives, in order that the population understands that choices are being made deliberately, but with the best interests of society in mind. Fourth, the process has to be managed effectively, that is, set explicit objectives to provide a clear sense of direction, and facilitate social consensus. This is particularly important for the provincial governments, for doing so will establish a framework for greater accountability in health care. Fifth, provincial governments must allocate managerial responsibility and accountability (e.g., thorough enabling legislation, financial incentives) to achieve these objectives. Finally, it is necessary for the federal government to play a major role with its provincial partners in developing the information and technical skills infrastructure, and managerial capacities necessary for effective governance in health care. Since many of these issues are common across the country, strong leadership by the federal government is essential.

It may be tempting to assume that governance of public and private organizations are similar and, hence, allow us to implement the straightforward corporate governance model (based on the "bottom line"). Unfortunately, that would be wrong. Effectiveness in public sector

organizations is more complex: efficiency has to be balanced with equity in the funding or provision of services, and thus, in their management and governance. It obviously is an area which requires strong leadership: is the federal government up to the task?

References

Angus, Douglas E. (1997). "Les systèmes de santé publics de demain: l'équité sacrifiée au profit de l'efficience?", *Ruptures*, Vol. 4, No. 2: 206-217.

Angus, Douglas E. (1998). *Some Thoughts on Rights and Responsibilities in Health Care*. Ottawa: University of Ottawa, Faculty of Administration, Working Paper 98-36.

Bégin, Monique (1999). *Recovering the Canada Health Act (1984): Reflections on the Future of Medicare*. Ottawa: University of Ottawa, Faculty of Administration, Working Paper 99-32.

Burelle, André (1995). *Le mal canadien: essai de diagnostic et esquisse d'une thérapie*, Montréal: Fides.

Feldberg, Gina and Robert Vipond (1999). "The Views of Consumerism", in Drache, Daniel Terry Sullivan (eds.), *Health Reform: Public Success, Private Failure*. London and New York: Routledge.

Forest, Pierre-Gerlier, Diane Gagnon, Julie Abelson, Jean Turgeon and Paul Lamarche (1999). *Issues in the Governance of Integrated Health Systems*, Library Series Documents. Ottawa: Canadian Health Services Research Foundation.

Freddi, Giorgio (1989). "Problems of Organizational Rationality in Health Systems: Political Controls and Policy Options", in Freddi, Giorgio and James Warner Bjorkman (eds.). *Controlling Medical Professionals: The Comparative Politics of Health Governance*. London: Sage Publications.

Haug, Marie and Bebe Lavin (1983). *Consumerism in Medicine: Challenging Physician Authority*. Beverly Hills: Sage Publications.

Kickert, W. (1993). "Complexity, Governance and Dynamics: Conceptual Explorations of Public Network Management", in Kooiman, J. (ed.), *Modern Governance*. London: Sage Publications.

Livingston, Martha (1998). "Update on Health Care in Canada: What's Right, What's Wrong, What's Left", *Journal of Public Health Policy*, Vol. 19, No. 3: 267-288.

Paquet, Gilles (1998). *La gouvernance en tant que manière de voir: le paradigme de l'apprentissage*. Ottawa: University of Ottawa, Faculty of Administration, Working Paper 98-29.

Paquet, Gilles (1999). *Tectonic Changes in Canadian Governance*. Ottawa: University of Ottawa, Faculty of Administration, Working Paper 99-10.

Paquet, Gilles (1999). "Innovations in Governance in Canada", in *Optimum: The Journal of Public Sector Management*, Vol. 29, No. 2/3: 71-81.

Purchase, Bryne and Ronald Hirshhorn (1994). *Searching for Good Governance*. Kingston: Queen's University, School of Policy Studies.

Saltman, Richard B. and Josep Figueras (1997). *European Health Care Reform: Analysis of Current Strategies*. Copenhagen: World Health Organization, Regional Office for Europe.

Simeon, Richard (1972). *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*. Toronto: University of Toronto Press.

Simeon, Richard (1987). "Federalism in the 1980's", in *Politics: Canada*, Sixth Edition, ed. by Paul Fox and Graham White. Toronto: McGraw-Hill Ryerson.

Donna Winslow

Christopher Dandeker

Donna Winslow[1]

Challenge to Military Culture from Living in the 21st Century[2]

Abstract

The armed services need to be different from civilian society in order to meet a functional imperative, warfighting. However, they must also adjust to the society of which they are a part. They must adjust to what we would call the social and political imperative. It is from this society that they recruit their personnel with values that will change over the decades. Young people are constantly moving into the services and out again into civil society. It is to that society that recruits eventually return, hopefully to a decent civilian career. It is from that society that the services get their funding through taxation and acquire the legitimacy that defends their budget and their position in the state.

This raises the classic conundrum. How can the services, as they move through history, address both imperatives, the need to be different because of the functional imperative of warfighting and the social and political imperative of adjusting to the society of which they are a part?

In order to balance the social and political and functional imperatives our own recommendation is to adopt, with a small "p", a pragmatic position. We are hostile

by nature to those who would argue that the functional imperative imposes unique demands upon military culture which can never change and which society must always respect—and that's the end of the argument. We are also hostile to the other extreme which is to argue that the unique culture of the armed services is purely a matter of tradition, easily amenable to change and to adjustment to wider social currents.

These are two extreme positions between which one can identify the pragmatic position. The leaders of each generation of the services must ask the questions:

"'What makes the military unique?"

"What do we need to keep from the past in order to preserve our fighting effectiveness?'"

"What can we afford to change?"

The task for the armed services in the advanced societies that one might call industrial democracies is to negotiate a position that answers these questions.

Résumé

Les services armés doivent se démarquer de la société civile afin de pouvoir répondre à un impératif fonctionnel, l'intervention en temps de guerre. Par ailleurs, ils doivent également s'adapter à la société dont ils font partie, à ce que nous pourrions appeler l'impératif politique. C'est dans cette société qu'ils effectuent leur recrutement à partir de valeurs qui évolueront au fil du temps. Il y a constamment un flux de jeunes gens qui s'y enrôlent pour réintégrer ensuite la société civile dans l'espoir d'y faire une carrière décente. C'est cette même société qui, grâce aux impôts, finance les services armés et leur donne la légitimité nécessaire pour défendre leurs budgets ainsi que leur place au sein de l'État.

Tout cela crée le dilemme classique: comment, au fil de l'histoire, les services armés parviennent-ils à se conformer aux deux impératifs, la nécessité d'être différent due à l'impératif fonctionnel de la guerre, et l'impératif socio-politique d'avoir à s'adapter à la société dont ils font partie?

Pour faire l'adéquation entre l'impératif socio-politique et l'impératif fonctionnel, notre recommandation personnelle serait de prendre une position pragmatique avec un "p"' minuscule. Par nature, nous sommes hostiles à l'égard de ceux qui prétendraient sans en démordre que l'impératif fonctionnel impose à la culture militaire des exigences particulières essentiellement immuables et que la société doit toujours respecter. Nous sommes également hostiles à l'endroit de l'autre extrême dont l'argument est que la culture intrinsèque aux services armés est purement question de tradition, et qu'elle se plierait volontiers à des changements et à des ajustements en réponse aux grands courants sociaux.

Voilà deux positions extrêmes entre lesquelles il est possible d'identifier la position pragmatique. Les chefs de file de chaque génération de militaires doivent poser ces questions-ci:

"En quoi l'armée est-elle une institution unique en son genre?"

"Que devons-nous conserver du passé afin de préserver notre efficacité au combat?"

"Que pouvons-nous nous permettre de changer?"

Dans les sociétés avancées qu'on pourrait qualifier de démocraties industrielles, la tâche des forces armées consiste à négocier une position qui réponde à ces interrogations.

Introduction

For the armed forces the pace of change since the end of the Cold War in 1989 has been extraordinary. This has accompanied simultaneous changes in both international security and domestic society. One of the effects of the period of domestic and international turbulence since 1989, is that the "people dimension" of the British armed services and of the Canadian Forces (CF) has become a central problem in defence debates. In Great Britain the outcome of the Strategic Defence Review has meant that a range of personnel issues—equal opportunities in employment and "over-stretch" for example—have moved up the political agenda.[3] In Canada, quality of life and problems regarding gender integration have been important issues.

A key issue for those concerned with the people dimension of the armed services is the extent to which the military way of life needs to be different from that of civilian society.[4] This problem has always been at the heart of the academic study of civil-military relations. The starting point in the literature is that armed forces are "Janus-faced" organizations. On the one hand, they have to respond to the strategic context by building militarily effective organisations. On the other hand, especially in democracies, they have to ensure that the armed services are responsive to the changing society which they defend, that pays for them, and without whose support they can do little. In terms of military culture, how does the organization protect and promote a professional culture necessary to perform its missions and yet remain reflective of the civilian culture it serves? The issues then are how responsive and how reflective?

Conservatives tend to be suspicious of tempering military culture in order to accommodate changes in wider society, even to the extent of arguing that military effectiveness requires a supportive framework of robust conservative values in civilian society. These authors believe that the military would lose its "institutional soul" rooted in warfighting.[5] In contrast, liberals tend to expect the armed services to conform to values and current trends in civilian society.[6] These two points of view also seem to reflect challenges to the definition of security. On the one hand traditionalists favour a type of Cold War definition centred in military and state-centric terms while wideners believe that the greatest threats to

a nation's survival may not be military, but can involve environmental, social economic and/or information–age threats.[7]

Closer examination of the issues shows that the most sensible approach is a pragmatic one that lies somewhere between the conservative and liberal positions and it is misleading to assume that military accommodation to civilian social values must necessarily undermine military effectiveness.[8] It is also unrealistic to underestimate the unique character and demands of military life. The challenge for the personnel strategist is to ensure that a balance is struck between these, sometimes competing, demands. Furthermore, in adjusting to changes in society and international security, the personnel strategist has to take into account the history and traditions of the individual Services, which are normally critical factors in sustaining their identity, sense of shared purpose and morale.

The problems associated with the military's "need to be different"—how such differences are to be drawn in practice and how to generate support and legitimacy for them in civilian society—have moved centre-stage in recent years.[9] This is because of a series of interconnected challenges to military culture. The new strategic context has raised questions about the continuing relevance of warrior values in military operations where high technology, "push button" warfare seems to have a higher profile, and where warfare itself may come to be displaced by a variety of peace-support operations. In society, social, cultural and legal changes provide a less robust supporting framework for the core values of military culture. Indeed, a new generation of prospective recruits is less accepting of some of the traditional demands of a military way of life. Meanwhile, there are cost-pressures at work that have led to a civilianizing influence on the ethos of the Services through the introduction of what are considered to be best business practices such as the wider employment of civilians and contractors. Before considering these challenges in more depth it is as well to focus first on the distinctive features of military culture.

Military Culture

In general terms, culture comprises a set of ideas, beliefs and symbols that provide a definition of the world for a group or organization and

guides for action.[10] The functional imperatives of war and military operations ensure that the military stands apart from civilian society. Snider tells us that "warfighting still determines the central beliefs, values, and complex symbolic formations that define military culture".[11] And Boëne says, "The uniqueness of the military ...resides in the limits of instrumental rationality in combat and in the transgression of habitual social norms (notably the taboo surrounding the taking of human life)."[12]

Of course, there are important ways in which the armed services are similar to civilian enterprises. For example, one can point to the importance of teamworking, leadership, the idea of loyalty to the organization and its mission and—of ever-increasing importance—the need to work with advanced technologies particularly in the information field. Furthermore, the military shares with other organizations such as those in the field of education, health and religion an "institutional" quality. In institutional organizations, the main drivers are values rather than the market. The military depends on and must support many intangible qualities of its members including courage, integrity, cohesion, discipline, and high morale.[13] People carry out their tasks not to make a profit but in order to implement the values that provide the overall purpose of the organization. In contrast, for market based organizations, the main driver is the need to monitor and adjust to the demands of the market in order to make a profit on the capital invested.[14]

As institutional organizations the armed services also have their own unique culture and resulting contract with their personnel. Ensuring that service personnel are prepared to fight involves leadership, management and the motivation. For the military the core values of military culture are subordination of the self to the group and the idea of sacrifice: the individual must be willing to subordinate him or herself to the common good—the team and common task. Furthermore, there must be a willingness to sacrifice one's life for the team in peace and war—without this an armed force will risk defeat. Ideally, as a result of leadership and training, these values will be upheld voluntarily as a result of conscience. However, if necessary coercion may be required. This is what makes military discipline—an effective structure of command for the giving and receiving of orders —quite different from other organizations in terms of the demands it places upon personnel. The military is unique in

the nature and extent of the demands it places upon its personnel. These include the obligation to train to kill and to sacrifice self; to participate in a military community where one works, lives and socializes with other service personnel; and, when necessary, a twenty-four-hour commitment with the risk of separation from family at short notice.

Challenges to Military Culture—The Strategic Context

As indicated earlier, challenges to military culture stem from changes in both international security and society at large. In this discussion, we will focus on the impact of the strategic context on the civil-military relationship before turning to the effects of a changing society on that relationship. In responding to these challenges the armed services need to sustain bonds of "civil-military understanding". Christopher Dandeker has used this term to refer to a mutually supportive relationship between the armed services and the civilian community; this is a relationship of communication and perception, trust and legitimacy.

After a decade of reductions in military establishments and a seeming widening of the spectrum of missions that they are expected to perform, the services face an inevitable question by the public: what is the relevance and purpose of the armed services? Two particular difficulties arise here. The first concerns the connection between strategy and public perceptions. There has been a perceived decline in major, direct, military threats to the UK, and in the apparent priority given to non-war fighting roles such as peacekeeping and military assistance to humanitarian operations. A likely scenario for Canada is that she will continue to allow the US to be primarily concerned with continental defence systems which will allow her to put more military resources into maintaining international rather than national security. This said, future demands of national security might become more complex. National security may be more threatened through economic, information, criminal, environmental, or terrorist type of events/activities than through the possibility of traditional types of military threat.[15] What role, if any, will the military be asked to play in defence of the nation against these new threats?

Accordingly, the question may be asked: why should scarce resources continue to be expended on maintaining a high-intensity war

machine—the core of a distinctive cultural identity of the military? For example, the Revolution in Military Affairs (RMA), the move to a high-technology/information defence environment, will be extremely expensive, requiring continual renewal and updating and the maintenance of highly skilled personnel (read competitive salaries) even if only to remain interoperable with the US military.

There is some concern amongst military personnel that the core warfighting role is being obscured in public perceptions. The British perception is that it makes good sense to train the armed forces for warfighting and then to "train down" in order to cater for the needs of missions in which a more restrained use of force is appropriate. In Canada, however, there is a growing view that armed forces need to "train up" for the new types of operations other than war which are fundamentally more complex and ambiguous than warfighting due the large variety of social actors and tasks that the military are asked to accomplish in a theatre of operations. In addition, the notion of Human Security has moved to the forefront of Canadian foreign policy. This entails many elements from peace operations to the delivery of humanitarian assistance, foreign aid, election monitoring, democracy building, post-conflict reconstruction of infrastructure and social institutions and preventative diplomacy. It also means a shift away from peace operations with a predominantly military focus to a form of new coalition with NGOs, civilian peacekeepers, human rights monitors, etc. This makes the task of determining what role the armed forces should play in the future all the more difficult.

Indeed, the contrast between the United States and Canada in formulating a clear understanding of when military forces should be used is quite noticeable. The Clinton administration has defined America's interests as "vital interests", "important interests" and "humanitarian interests".[16] Vital interests are "those of broad, overriding importance to the safety and vitality"[17] of the United States and include the physical security of its territory and that of its allies, the safety of its citizens and economic well-being. To achieve this, the United States would do "whatever it takes, including, when necessary, using decisive military force unilaterally."[18] Important interests are situations where important national interests are at stake but do not affect national survival. In these

cases, national well-being and the character of the world are affected and the United States would employ its resources insofar as the costs and the risks are commensurate with the interests at stake.[19] In contrast, Canada has no explicitly stated national interests.[20] Without specific "vital interests", the CF will continue to operate in the future with broad, unattainable defence missions, based more on Canadian values. The prime example of this is the 1994 Defence White Paper, which has not been revised or rewritten to reflect the pronouncements emanating from the Department of Foreign Affairs and International Trade (DFAIT) with respect to human security or "soft power".[21] Moreover, Canada, unlike the United States, appears to have no coordinated effort among federal departments to develop an accepted strategic assessment and security environment. This missing link between foreign and defence policies will continue to be a significant hindrance to future defence planning. Finally, Canada's current and likely future foreign policy, based on "human security" provides more questions than answers with respect to the CF's role in international security and serving Canada's interests. The principle that military force is of declining utility in international politics is entrenched in current Canadian foreign policy.[22] Canada's desire to focus more on the area of peacebuilding, or post-conflict political and economic development aimed at consolidation of a lasting peace may be an appropriate "niche diplomacy" role of a middle power. However, peacebuilding is an essential aspect of conflict management, that includes holding elections and implementing market reforms in local economies; and can only work in a stable and secure political environment.[23] Many of the military tasks conducted by "peacekeepers" lay the groundwork for peacekeeping. This is part of the fallacy of "soft power" approaches; the ability to exercise soft power depends on hard power.[24] The bottom line is that soft power must work in concert with hard power, not exclusive of it. Unless DFAIT and Canada's parliament accept that reality, the CF will continue to be under-funded and struggle to keep properly trained and equipped expeditionary ground units available for international conflict-management missions.

The task of building a national consensus on what armed forces the UK and Canada need for their security and defence policy is not made any easier by a second difficulty: the decline in the "knowledgeability"

of military affairs in the civilian community—both opinion formers and the general public. It appears that respect for and support of the armed forces is quite robust in the UK and Canada. However, support for the current level of funding for defence is less so particularly in face of demands from other areas of public expenditure such as health, education, the environment, etc. In addition, direct experience and appreciation of military affairs has declined markedly over the past twenty years both in the political elite as well as in broader sections of the population. Most people's experience of the military is gained second-hand from the media.

In the UK and Canada, there has been a reduction in the number of people with direct experience of military affairs.[25] As a consequence of the long-term decline in the size of the military establishment there has been a corresponding diminution in the number of military and ex-military personnel in society. In addition, with base closures and rationalization, the "footprint" made by the military on society has diminished. The number of those—especially opinion formers—who can speak knowledgeably about the services, has declined in recent decades. In the UK, linkages between the military and MPs are being improved but this has to be part of a broader effort of investment in public relations, and in making more of the role of reserve forces as a means of sustaining civil-military understanding. In Canada there is little direct MP experience with the military.[26] This is not only true for Canada, in the US the House of Representatives had 320 veterans in 1970, but fewer than 130 in 1994. In 1997, for the first time ever, neither the secretary of defence, the national security advisor, the secretary of state, nor any of their deputies had ever been in uniform.[27] In Canada, only recently has Parliament began to take a serious interest in the well-being of the CF members. In 1998, a Parliamentary committee examined the quality of life of CF members, and was genuinely shocked about the way in which CF members had been treated:

> At the outset, some of us may have felt that ours would be a technical and matter-of-fact inquiry. It quickly became apparent that such would not be the case. We could not have guessed at the depth of malaise felt by many. We could not have envisioned the degree of

> frustration and desperation expressed by countless witnesses. Often the stories we heard proved heart wrenching, making us wonder how things could have gone so obviously wrong.[28]

This lack of civilian knowledge of the military is mirrored by a corresponding aversion amongst many military officers to politics. Politics is seen as a civilian domain and something that officers should not be involved with. This attitude is reinforced by a certain preference for technical or warfighting competence. For example, a fourth-year engineering student at the Royal Military College, daughter of a serving officer, explained to Dr. Last that she had never voted and never intended to—she didn't understand this "politics thing", and didn't think it was relevant.[29] The end result is a shortage of senior officers who understand the workings of the government which they must deal with. Again Last tells us that an Assistant Deputy Minister in the Department of National Defence was asked what one thing he would change about officer education and he replied that officers should at least have a "civics" course in order to understand how the Canadian government works.[30]

Challenges to Military Culture—The Wider Society[31]

When considering recent developments in military organization, it is interesting to note the striking parallels between the drivers of change facing the armed forces and those encountered by private sector organizations. According to Dandeker, six dimensions are worthy of note. First, the end of an immediate direct threat to national territorial sovereignty is paralleled by the lack of a stable market for business. Second, military establishments such as those in the UK and Canada are at their lowest level since the Second World War. The trend of company downsizing since the 1980s parallels this process. Third, the military has to addresses a range of missions involving operations other than major war, namely, intervention abroad in multinational contributions to international peace and stability. This focus on the projection of force to dispersed points on the globe from a home base parallels the ways in which companies are having to respond to increasingly global markets. Fourth, the military are having to think through the possibilities offered by the application of business models to the military, such as contracting

out of functions, restructuring of hierarchies and so on—processes that echo civilian developments in the empowerment and restructuring of companies. Fifth, both military and civilian organizations have to respond to the social and cultural challenges of a changing society. This society is more individualistic (in which, for example, people wish to be actively involved in how their working lives are structured and who expect employers to respect their private and family commitments), egalitarian, individualistic and litigious. Sixth, both sets of organizations are seeking to make best use of the new information technologies in enabling them to achieve a competitive edge over their rivals. This is evident in all aspects of organizations from the personnel functions (such as the administration of pay, personnel records and so on) to operational areas—not least in the offensive and defensive aspects of "information warfare." But the most important implications of the information revolution, as Verdon, Okros and Wait point out, is less about technology than it is about a revolution in organizational structure and culture. Thus, the drivers of change in organizational structure are both strategic and societal.

> Both revolutions [in Business Affairs, RBA, and in Military Affairs, RMA] are being driven by similar technological advances and a correspondingly changing operations environment. The RBA is not only changing the commercial domain and practices but is a dramatic force driving accelerating social, cultural and political change around the world (and therefore influencing the motivations and opportunities for conflict). The RMA will largely influence the exploitation of opportunities and the complexity of conflict, essentially the "how" of warfare. The combination of changes in the why and how conflict is engaged culminate in the transformation of war, conflict and security.[32]

The armed services have to establish how far commercial practices such as privatization, contracting out and the formation of agencies in the logistic and support sectors be used in an institutional organization without compromising operational effectiveness. As with the private sector, the armed forces are increasingly reviewing their core activities,

identifying which might be contracted out in order to cut costs but not at the sacrifice of quality—indeed, costs may be reduced while quality improves as appears to have occurred in the field of catering services. Outsourcing can involve privatizing a function or awarding a fixed-term contract to provide a "contracted out service"—an exercise often conjoined with market testing: the submitting of an activity to a competition in which the existing in-house provider has to compete with private sector bids to provide the service for a subsequent period.

In addition to outsourcing, civilianizing is a significant trend in the armed services of the UK. Civilianization involves the substitution of civilian for military personnel with 2,000 such posts being civilianized at present. Civilians are, for the most part, at least in the UK, cheaper to employ than expensively trained military personnel. Also civilians often stay in their posts longer than military personnel do, providing valuable continuity of experience and expertise. Since the mid-1990s, the objective has been to "civilianize posts and so release valuable military resources to the front line wherever it makes operational and economic sense to do so".[33]

The challenge placed before the military is to identify what is the core uniformed regular military personnel requirement, beyond which functions could be performed by civilian employed either by the Ministry of Defence or by private companies under contract. For example, with the RAF's officers constituting about 18% of the service total compared with 5% for some other countries such as the IDF (Israeli Defence Force) , further civilianizing of non-core functions can be anticipated not least because of the savings in costs that can be achieved.[34] In establishing such core figures the assumptions are that if a post is required in time of peace and war then a regular is needed. If a task is required in wartime only, then a reservist could perform it. In the case of tasks required in peacetime only, then it could be contracted out or civilianized. The trend is thus towards smaller forces with fewer regulars, more use of reservists, civilians and contractors.

In addition to applying best business practices to the armed services, the military has to adjust to a socio-cultural context, which is less convergent with the core assumptions of traditional military culture. A higher value is placed upon individualism and social equality with

citizens, attuned to the "blame and compensation" culture more disposed to enforce their rights in the courts. In this case the Canadian Forces have been transformed more rapidly than in the UK. The Canadian Forces have been subject to a number of important legislative acts which have forced change upon the organization. The Canadian Forces was among the first organizations to be fully bilingual and has done away with barriers to homosexual and female participation in all job qualifications including combat.[35]

In contrast, the UK has remained more traditional and has only recently been obliged to change due to participation in the European Union (EU).[36] Previously the British Crown together with the Ministry of Defence (MOD) and the services were exempt from legislation. This is no longer the case and the policy has been for some years to behave as if the law did apply. In future, exemptions are likely to be supported only if and when it can be demonstrated that the imposition of law would be incompatible with essential training and operations of the military. In a climate that is less deferential, it is now up to the military to prove that conforming to the changing norms and values of wider society would be likely to damage operational efficiency rather than the burden of proof being on the proponents of change. It is interesting to note that over a decade ago the Canadian forces were unable to successfully prove that gender integration was detrimental to operational efficiency and thus in 1989 the Human Rights Tribunal found that the exemption from the Canadian Human Rights Act based on the occupational requirement could not be supported by the evidence. Therefore, the Tribunal ruled that CF policy which designated specific units and occupations as male-only was an unjustified discriminatory practice. If the UK follows the Canadian pattern then more often than not these issues will have to be addressed in a legal context. A series of rulings and directives will continue to flow not so much from the UK legislature but from such bodies as the EU Commission and European Court, especially in the field of employment law and health and safety at work and freedom of information.

Deference to authority figures—especially in institutional organizations—has waned: authority has to be earned and not taken for granted. This trend poses questions for the armed forces with their highly

structured authority relations as for example in recent discussions on whether service personnel ought to have the right to be able to air and represent their grievances in fora that are outside the formal chain of command. For example, Canada has recently set up an Ombudsman's office outside the military chain of command. This indicates a loosening chain of command in order to incorporate a more rights- based system of command and consultation more akin to non-military organizations. In a more individualistic society a lower priority is given to values of the community and the subordination of the self to that of the team. Also in a "post-modern" subjective culture it is more difficult to sustain objective definitions of right and wrong. Furthermore, significant sections of the youth population are less physically fit than before. In order to maintain standards the costs of the training machine are likely to rise in order to bring poorer quality recruits up to the standard required. It will also be a challenge to maintain the traditional expectation that military personnel should conform to a code of moral conduct that is more demanding than that expected in civilian life with respect to issues of honesty, integrity, and adultery. Focusing on the needs of the individual will be of critical importance in both recruitment and retention. This is why SDR in the UK is right to stress the importance of looking after the individual and the individual's family. The same can be said for the recognition that the Services need to take "individual aspirations for family stability into account as far as practicable" when managing postings although operational requirement must be paramount.[37] Similarly, in Canada steps have been taken to improve the quality of life and salaries of CF members, but only after years of neglect. And even now, arguably, such steps are tentative. Indeed, the Canadian Chief of Defence Staff recently told a parliamentary committee that without extra money, the CF would be unable to implement quality-of-life improvements , such as better pay, housing and social services for the troops.[38] There are also changes occurring concerning the families of military members. In recent years, the basis of the separate military community has been eroded significantly, although the effects on operational effectiveness remain unclear.[39] It is likely that in the future much of the military community will be dispersed into civilian society. Service accommodation will tend to be focused on the younger service families. Jessup shows how the welfare of military

families will increasingly be shared between the armed services and the civilian community.[40]

Within the family itself, increasingly both parents work with employers facing increased demands for career breaks and more flexible working practices, demands that are also having to take into account the growing number of single-parent families. For the armed services much work will need to be done to provide more flexible working conditions and to recognize that women are no longer prepared to place their own career second to that of their military partners. Women are of course pursuing careers in the military and career paths will have to take into account the female life cycle allowing breaks for pregnancy while still ensuring career development after a return to work. In the UK it is likely that the remaining rules excluding women from frontline positions will be removed, and issues connected with the training and working relations of gender-integrated units will have to be tackled.

A further challenge to military culture concerns the issue of social representation and diversity. While the wider employment of women is still an ongoing process, focus on equal opportunities and the armed services has shifted to the dimension of race and ethnicity. Society is also more ethnically heterogeneous than twenty years ago, raising issues of equal opportunities for all employing organizations and the need to ensure that the services are broadly representative of the society they are supposed to defend. There has been a good deal of discussion about the need for the armed services to be broadly "representative" of the society of which it is a part. In the UK, the Policy for People chapter includes the statement that

> We are determined that the Armed Forces should better reflect the ethnic composition of the British population. Currently some 6% of the general population are from ethnic minority backgrounds, but they make up just 1% of the services. This must not continue. We have set a goal of attracting 2% of new recruits this year from ethnic minority communities for each Service. We want that goal to increase by 1% each year so that, eventually, the composition of our Armed Forces reflects that of the population as a whole.[41]

Canada is rapidly becoming a diversified country due to increased immigration from non-European countries. Thus, according to CF policy, it is important that the CF be integral to the society it serves, not isolated from it, therefore the composition of the military must reflect the population it serves. For example, the Army's statement on leadership in a diverse army tells us that "An effective Army that represents more of Canada will inspire the confidence of all Canadians." Promoting diversity also means an expanded recruitment base and a "skill enhanced organisation more connected to all segments of Canadian society".[42]

The key question arising here is whether the goal of "closing the gap" is defensible and achievable? The idea of representativeness can be given at least two rather different interpretations. First, one can refer to a socio-demographic match between military and society. In this context this would involve the military matching the statistical profile in the wider population—a goal achieved through planned targets if not quotas. As Sir Michael Howard has pointed out, this is very much an American value.[43] Second, one might argue that the armed services should subscribe to core societal values such as equality of opportunity, decency, fairness, careers open to all, and advancement in the organization on merit. Accordingly, the services could feel relatively comfortable about the task of explaining the mismatch between their profile and that of society, but with one proviso. The gap would need to be explained not by a failure to have an effective equality of opportunity programme, but in terms of the propensity of particular groups to select certain kinds of occupations, military or civilian.[44] Given this differential propensity rate amongst groups in society, it is most unlikely that the services will be able to achieve the goals of representation in the first sense of that concept. Reaching such a goal would require programmes of affirmative action that are illegal in the UK and in Canada and, perhaps, on the wane in the US.[45]

It might be asked why the armed services should be (as they are) devoting so much attention to the issue of Equal Opportunities, whether in the context of ethnic minorities or the dimension of gender. This question raises far broader issues concerning the evolution of military culture. In recent discussions, it has become clear that, in this area at least, some people perceive a "zero-sum" conflict between functional

and societal imperatives. That is to say, meeting (so called "politically correct") equal opportunities objectives detracts from operational effectiveness. Such action diverts investment from more worthy objectives such as platforms or other equipment. Also, equal opportunities would, perhaps, undermine the traditional cohesion of the military community; that here was another area where the military rather than being used to defend the country was being used as a "social experiment" or part of a project of building a new, more inclusive society.[46] As one American military expert has written:

> The cultural gap between the two entities [civilian and military culture] is not necessarily dangerous to American democracy in and of itself, but can and should exist so the military can accommodate both the society it protects and the battlefield on which it must perform. On the one hand, closing the gap for the sole sake of accommodating social imperatives can only betray the military's ability to meet the uncompromising needs of its mission. On the other hand, the gap can become problematic for civil-military relations if the military swings in the other direction and answers solely to the battlefield without being cognizant of and responsive to the mores and values of the society at large. To many observers, the values and social mores of 1990s America—narcissistic, morally relativist, self-indulgent, hedonistic, consumerist, individualistic, victim-centered, nihilistic, and soft —seem hopelessly at odds with those of traditional military culture.[47]

Other commentators have identified a number of reasons why meeting equal opportunity objectives is a desirable one from the point of view of the operational effectiveness of the armed services.[48] First of all, it can improve access to a wider recruitment pool as the armed services compete with civilian companies for scarce labour both in terms of quantity and quality. In the UK, one can point to the fact that ethnic minorities, although comprising about six per cent of the national population constitute over nineteen per cent of the 16-24 military recruitment pool. In Canada, although currently there are twice as many under 15 as there are over 65, by 2030 the dependent elderly (over 65) will outnumber

dependents. This trend, combined with declining fertility rates, means that immigration is the only way to maintain or increase the population.[49] Immigrants may come to outnumber those born in Canada and might constitute in the future the major source of recruits—a very different picture from the predominantly European-origin white force of today.

In addition, there is a predisposition of some ethnic minority populations to pursue education as a means of improving their labour market positions, thus providing the services with a useful additional pool of skilled labour. Second, the armed services would benefit from a diversity of skills and backgrounds that a broader-based entry would produce. With the need for more intelligent and flexible service personnel likely to increase rather than decrease, such diversity is likely to prove an advantage in future years. Third, a military freed from racial discrimination and focused instead on diversity, tolerance and decency would be more operationally effective than one in which racial harassment was permitted.[50] Fourth, the services could benefit from being seen to live up to the ideal of an equal opportunities employer. While this may enhance their standing in ethnic minority communities, it is just as important to sustain the legitimacy of the armed services and thus the fount of good will amongst the general public. In any case, the legal pressure to conform to this ideal is real enough. While the services have much to gain from recruiting a greater proportion of the ethnic minority communities than they currently do, those communities themselves would also derive some benefit. LCol Crawford has argued (drawing on the work of Cynthia Enloe[51]) that, if American experience is anything to go by, military service can provide ethnic minority communities with a sense that they are valuable elements of the social and political system. That is to say, people from these backgrounds are and feel included, not excluded: they develop skills that enhance their socio-economic mobility as well as acquiring a range of leadership skills that can be transferred back to local communities. This would suggest that all three could be seen as facets of a process of citizenship building.

Conclusion

To conclude, as Dandeker has suggested, a pragmatic perspective leads one to the conclusion that it is misconceived to view meeting functional

and societal imperatives as a zero-sum game. The armed services confront a series of challenges to their unique culture. They need to develop a personnel strategy that does not damage operational effectiveness—or make the services feel that they are permanently under attack from outsiders who do not fully appreciate the strategic imperatives impinging on them. Achieving a force representative of social diversity, the demands of individual rights and member-defined fair treatment will be a challenge to human resource programmes, which must develop more flexibility.[52] Thus, the supportive links between the armed forces and society must be cultivated. Doing so need not weaken but can actually strengthen the services. In a healthy democracy it is vital that the armed forces do not remain too far apart from the society they are charged to defend. After all, it is society that funds them and bestows on them their legitimacy; and it is society from which they recruit their personnel and to which they return them to continue their working lives as civilians.

Notes

1. Research for this paper by Dr. Winslow was funded by the US Army Research Institute, Contract No. DASW01-98-M-1868, "Army Culture".
2. An earlier version of this paper entitled "On the Need to Be Different: Recent Trends in Military Culture" was written by Dr. Dandeker for Hew Strachan (ed.), *British Army: Manpower and Society* (Frank Cass, 1999).
3. "Past defence reviews have concentrated on strategy and equipment, sometimes with insufficient consideration of people. This Review has given people their proper place at the centre of our plans". *The Strategic Defence Review*, Cm 3999, July 1998, 36, para. 138 (London: The Stationery Office, 1998).
4. In Great Britain, the idea of the "right to be different" (and whether the formulation is better put as a *need* to be different) came to prominence during the tenure of General Sir Michael Rose as Adjutant General. A number of in-house studies explored this theme. Some of the issues were discussed in October 1997 at a seminar sponsored by the British Military Studies Group. See *The Future of British Military Cultures: Social and Legal Change in Britain and Europe: The Personnel Implications for the Armed Forces of the 21st Century* (British Military Studies Group, February 1998).
5. See John Hillen, "Must US Military Culture Reform?", *Orbis*, Vol 43 No. 1 (1999), p. 43.

6. For a review of these traditions see Bernard Boëne, "How 'Unique' Should the Military Be? A Review of Representative Literature and Outline of a Synthetic Formulation", *Archives européennes de sociologie*, Vol. 31, No. 1 (1990), pp. 3-59.
7. John Verdon, Capt. N.A. Okros and Tracey Wait, "Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD. p.7.
8. The most influential of the conservative thinkers on these issues is Samuel P. Huntington, *The Soldier and the State: The Theory and Practice of Civil-Military Relations* (Cambridge, Mass., Harvard 1957). For those seeking to steer a pragmatic, midway path between conservatism and liberalism the most persuasive is the work of Morris Janowitz, *The Professional Soldier* (Glencoe, Ill., Free Press 1960).
9. We refer to the need, not right, to be different because, in democracies, the rights of the armed services are pre-given but devolved to them by the civilian political leadership. Normally, a professional military is given the right to be heard not least on such matters as what it feels it needs to do its job properly. It thus may have a need to be different but a right to be so presupposes a civilian decision to grant it.
10. See Karen O. Dunivin, "Military Culture: Change and Continuity", *Armed Forces and Society*, Vol., 20, No 4 (Summer 1994), pp. 531-47; idem, *Military Culture, A Paradigm Shift*, Air War College Maxwell Paper No 10 (Maxwell Air Force Base, Alabama, USA, February 1997).
11. Snider quoted in John Hillen, "Must US Military Culture Reform?", *Orbis*, Vol. 43, No 1 (1999), p.46.
12. Bernard Boëne, "How 'Unique' Should the Military Be? A Review of Representative Literature and Outline of a Synthetic Formulation", *Archives européennes de sociologie*, Vol. 31, No. 1 (1990), p. 29.
13. John Verdon, Capt. N.A. Okros and Tracey Wait, "Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD., USA, p.18.
14. On the distinctive features of institutional organizations and the implications for the armed services see the useful discussion in H. Sorensen, "New Perspectives on the Military Profession: The I/O Model and Esprit de Corps Re-evaluated", Armed Forces and Society, Vol. 20, No 4, (Summer 1994), pp. 599-617, 610. See also Charles C. Moskos and Frank R.Wood, *The Military: More Than Just a Job?* (Washington: Pergamon-Brassey's International Defense Publishers, 1988).
15. John Verdon, Capt. N.A. Okros and Tracey Wait, "Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD., USA, p.21.
16. For the American policy discussion on its vital interests and national interests, see United States, Office of the President, *A National Security Strategy for a New Century*, (Washington, DC, May 1997), p. i.
17. *Security Strategy for a New Century*, p. i.

18. Joel Sokolsky, "Is the 'Manager' Still in? The United States and the Global Outlook", in *In the Arena: The Army and the Future Security Environment,* (Kingston: Directorate of Land Strategic Concepts, Oct. 1998), p. 22.
19. Ibid.
20. Government of Canada, "The Global Environment", in *The Future Security Environment,* Report 99-2 (Kingston: Directorate of Land Strategic Concepts, August 1999), p. 13.
21. Sean Maloney and Scot Robertson, "The Revolution in Military Affairs: Possible Implications for Canada", International Journal (Summer 1999), vol. 3.
22. Lloyd Axworthy, "Canada and Human Security: The Need for Leadership", DFAIT web site (www.dfait_maeci.ca); summarized by Fen Osler Hampson and Dean Oliver, "Pulpit Diplomacy: A Critical Assessment of the Axworthy Doctrine", International Journal (Summer 1998), p. 380-381.
23. Allen G. Sens, "The New NATO and Operational Challenges for Canada", Defence Forum Annual Conference (Ottawa: 29-30 April 1998), pp. 6-7.
24. Ibid.
25. According to Dandeker in the UK there is roughly ten per cent of the residual military experience in contemporary society compared to even 20/30 years ago.
26. According to a survey conducted by Dr. Douglas Bland of the Centre for Defence Management Studies at Queen's University, Kingston, Ontario, Canada, the Canadian MPs responsible for approving $9.5 billion in annual military spending often know little about Canada's defence needs or objectives. See Norm Ovenden, "'MPs Know Nothing about Defence': Study", in *The Ottawa Citizen*, November 5, 1999, p. A4. Dr. Bland commented about the results of the study: "Defence is the only government policy where the government is prepared to deliberately spend the lives of people to accomplish policy ends. You would think if they're going to send people out to get killed, they should think about it." Ibid.
27. John Hillen, "Must US Military Culture Reform?"*Orbis*, Vol. 43, No 1 (1999), p.54. See also Mark Shields, "When Heroes Were Ordinary Men", *Washington Post*, August 3, 1998.
28. Canada, Standing Committee on National Defence and Veterans Affairs, *Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces* (October 1998), at http://www.parl.gc.ca/InfoComDoc/36/1/NDVA/Studies/Reports/ndvarp03/09-chap1-e.htm, accessed Nov. 25, 1999, p. 2 of 6.
29. David Last, "Educating Officers: Post-Modern Professionals to Control and Prevent Violence". Working Paper submitted to the [Canadian] Chief of Defence Staff (1999), p.17.
30. Ibid.
31. Here we find that changes in society are themselves connected with the international context. Thus social changes in the UK and Canada are connected with transformations in other societies, processes which are reinforced by participation in the European Union and in NAFTA (North American Free Trade Agreement) and their legal regulations and trade arrangements. It is, therefore

difficult to consider social change in one country in isolation from other countries with which it is connected in relations of mutual influence.

32. John Verdon, Capt. N.A. Okros and Tracey Wait, "Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD., USA, p.2.
33. Great Britain, Ministry of Defence, *Statement on Defence Estimates* (London: HMSO, 1994), p. 77.
34. Discussions with RAF officers.
35. Among the important pieces of legislation affecting the Canadian Forces are: *The Canadian Human Rights Act* (1978); the equality section (Section 15) of the *Canadian Charter of Rights and Freedoms* which came into effect on April 17,1985; and the *Employment Equity Act, 1996* which determined that every Canadian citizen has the right to discrimination-free employment and promotion and that public institutions will strive to be representative of the public they serve.
36. For example, European Union courts have just ruled that homosexuals should not be prohibited from participation in UK's military.
37. Strategic Defence Review, Supporting Essay Nine, *Policy for People*, 9-3, 17. Leave and facilities for improved communication with families are also welcome improvements to service family life.
38. Mike Blanchfield, "Top General Warns of Possible Layoffs", *The Ottawa Citizen*, November 26, p. A4.
39. See the excellent work by Christopher Jessup, *Breaking Ranks: Social Change in Military Communities*, (London: Brassey's, 1996).
40. Jessup, p.180.
41. Strategic Defence Review, Supporting Essay Nine, 9-8, 41.
42. Canadian Army, *Leadership in a Diverse Army—The Challenge, the Promise, the Plan* (Ottawa: 1998, mimeo/first draft) p.1.
43. Sir Michael Howard, "Armed Forces and the Community", *RUSI Journal*, Vol. 141, No. 4 (August 1996) p.10.
44. This point raises difficult and complex issues, especially the extent to which an inclination not to pursue a military career is the result of perceived or real racism in the prospective employing organization.
45. LCol Stuart Crawford points out that the UK *Race Relations Act, 1976* permits the provision of help to members of under-represented groups in their efforts to enter certain occupational sectors. (Personal communication with LCol Stuart.) This can be in the form of education and training or encouragement through advertising and promotional initiatives. However, the selection process must be clearly on grounds of merit.
46. Some personnel in the British services have taken this view, one that is hardly absent in wider society. It was strongly criticized by the British Chief of the Defence Staff, General Sir Charles Guthrie, at a conference sponsored by the Ministry of Defence (MOD), "Equal Opportunities: Learning from Experience", held at the Royal Society of Arts, London, on November 10, 1998.

47. John Hillen, "Must US Military Culture Reform?", *Orbis*, Vol. 43, No 1 (1999), p.53
48. In England, the work of LCol Stuart Crawford is particularly noteworthy in this connection. The arguments developed here draw on Crawford's work and on a number of conversations with him over the past two years. See Crawford's "Racial Integration in the Army—An Historical Perspective", *British Army Review*, Vol. 111, December 1995, pp.24-28. His Defence Fellowship thesis on this subject is, as yet, unpublished and not available to the public.
49. John Verdon, Capt. N.A. Okros and Tracey Wait,"Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD. USA, pp.11-12.
50. Speech by General (ret'd) Colin Powell and subsequent discussion at the "Equal Opportunities Conference", Great Britain, Royal Society of Arts, November 10, 1998.
51. See Cynthia H. Enloe, *Ethnic Soldiers: State Security in Divided Societies* (Athens: University of Georgia Press, USA, 1980). Also see Charles Moskos and John S. Butler, *All That We Can Be: Black Leadership and Racial Integration the Army Way* (New York:Twentieth Century Fund Book, Basic Books, 1996.)
52. John Verdon, Capt. N.A. Okros and Tracey Wait, "Some Strategic Human Resource Implications for Canada's Military in 2020", Paper Presented to IUS October 1999, Baltimore MD., USA), p. 19.

Notes on Contributors

Notices biographiques des collaborateurs

Douglas E. Angus is a Health Economist, Associate Professor and Director of the Master of Health Administration Program in the Faculty of Administration, University of Ottawa. Previously, he was the Director of the Queen's University-University of Ottawa Economic Projects on Cost-Effectiveness of the Canadian Health Care System, and he is the lead author of its major report, *Sustainable Health Care for Canada.* Professor Angus has research activities at the international, national, provincial, and regional levels, particularly in the areas of health care reform, strategic management, health economics (cost analysis and economic evaluation of health programs), and health policy.

Douglas E. Angus est économiste de la santé, professeur auxiliaire et directeur du programme de maîtrise en gestion des services de santé au sein de la Faculté d'administration de l'Université d'Ottawa. Ancien directeur des études économiques menées conjointement par Queen's University et l'Université d'Ottawa sur la rentabilité du système de santé canadien, il est l'auteur principal de l'important rapport intitulé *Pour un système de soins de santé viable au Canada.* Ses recherches, menées aux niveaux international, national, provincial et régional, ont été axées particulièrement sur la réforme des soins de santé, la gestion stratégique, l'économie des soins de santé (analyse de coûts et évaluation économique des programmes) et la politique en matière de santé.

Monique Bégin, PC, OC, MSRC. A sociologist by training, the Honourable Monique Bégin was Minister of National Health and Welfare from 1977 to 1984. She joined academic life when leaving politics, where, among other mandates, she served as Dean of Health Sciences at University of Ottawa between 1990 and 1997. Now a professor emeritus, she is currently visiting in the University's Master of Health Administration programme. She has participated, as chair or member, in several committees, royal commissions and in one international independent commission.

Monique Bégin, CP, OC, MSRC, est sociologue de formation et a été ministre de la Santé nationale et du Bien-être social de 1977 à 1984. Après avoir quitté la vie politique, elle s'est orientée vers la vie universitaire et a été, entre autres, doyenne des sciences de la santé de l'Université d'Ottawa (1990-1997). En tant

que professeure émérite, elle travaille actuellement au programme de maîtrise en gestion des services de santé de l'Université. Elle a participé, à titre de membre ou de présidente, aux travaux de plusieurs comités et commissions royales, y compris une commission internationale indépendante.

Alan C. Cairns, FRSC, is a visiting professor in the Department of Political Science, University of Waterloo. He taught at The University of British Columbia from 1960 to his retirement in 1995. A recipient of the Molson Prize of the Canada Council, he is the author of several books and articles on the constitution.

Alan C. Cairns, FRSC, est professeur invité au Département de sciences politiques de University of Waterloo. Il a enseigné à The University of British Columbia de 1960 à 1995, année de son départ à la retraite. Lauréat du prix Molson du Conseil du Canada, il est l'auteur de plusieurs livres et articles sur la constitution.

Christopher Dandeker is Professor of Military Sociology and Head of the Department of War Studies at King's College London. He has lectured at a wide variety of academic and military institutions, including: the British Army Staff College, The Royal College of Defence Studies, The US Army, the Ministries of Defence of France, Sweden, Argentina, Czech Republic, Poland and Slovenia and Rumania.

Christopher Dandeker est professeur de sociologie militaire et dirige le Département des études militaires au King's College de Londres. Il a enseigné des communications dans divers établissements universitaires et militaires, notamment le British Army Staff College, le Royal College of Defence Studies, l'armée américaine, les ministères de la défense de France, Suède, Argentine, de la République Tchèque, de Pologne, de Slovénie et de Roumanie.

Andrée Lajoie, MSRC, est professeure à la Faculté de droit de l'Université de Montréal où elle œuvre au Centre de recherche en droit public depuis de nombreuses années dans le domaine des théories de l'émergence du droit. Elle y a exploré entre autres les rapports entre le droit, l'État et la société civile. Elle a publié de nombreux articles et ouvrages sur ces questions, dont récemment *Jugements de valeurs* aux Presses universitaires de France. Dans la poursuite

de ce questionnement, ses recherches actuelles portent sur l'intégration au droit des valeurs minoritaires ou marginalisées et elle s'intéresse dans ce contexte aux rapports entre gouvernance et autochtonie.

Andrée Lajoie, MSRC, is a professor in the Faculty of Law, Université de Montréal. She has spent many years at the Centre de recherche en droit public, researching the theories of law emergence and focusing, namely, on the relationships between the law, the state and civil society. Professor Lajoie has published many articles and books on those issues, including recently *Jugements de valeurs* at the Presses universitaires de France. In the same line of work, her current research focuses on the embodiment of minority or marginalized values within the law and, particularly, on the relationship between governance and aboriginal culture.

Sylvia Ostry, CC, FRSC, is Distinguished Research Fellow, Centre for International Studies, University of Toronto. After teaching and research at a number of Canadian universities as well as at the University of Oxford Institute of Statistics, she joined the Federal Government in 1964. Among the posts she held were Chief Statistician, Deputy Minister of International Trade, Ambassador for Multilateral Trade Negotiations and the Prime Minister's Personal Representative for the Economic Summit. From 1979 to 1983 she was Head of the Economics and Statistics Department of the OECD in Paris. In 1989 she was Volvo Distinguished Visiting Fellow, Council on Foreign Relations, New York. From 1990 to 1997 she was Chairman, Centre for International Studies, University of Toronto. She has received eighteen honorary degrees from universities in Canada and abroad and, in 1987, received the Outstanding Achievement Award of the Government of Canada. In December 1990 she was made a Companion of the Order of Canada.

Sylvia Ostry, CC, FRSC, est Distinguished Research Fellow du Centre for International Studies de University of Toronto. Après avoir enseigné et fait de la recherche dans un certain nombre d'universités canadiennes ainsi qu'à l'Institut de statistique de Oxford University, elle a rallié l'administration fédérale en 1964. Elle y a occupé, entre autres, les postes de statisticienne en chef, sous-ministre du Commerce international, ambassadrice dans le cadre de négociations multilatérales sur le commerce et représentante personnelle du premier ministre au sommet économique. De 1979 à 1983, elle a été directrice du département d'économie et de statistique de l'OCDE à Paris, en 1989, invitée d'honneur Volvo au Council on Foreign Relations, à New-York, et, de 1990 à 1997,

présidente du Centre for International Studies de University of Toronto. Récipiendaire de dix-huit titres honorifiques décernés par des universités canadiennes et étrangères, elle a reçu, en 1987, le Prix pour services insignes du gouvernement canadien. En décembre 1990, elle a été nommée Compagnon de l'Ordre du Canada.

Gilles Paquet, CM, MSRC, a écrit ou édité quelque vingt-cinq livres et publié un très grand nombre d'articles dans des revues ou de chapitres dans des ouvrages divers sur des thèmes allant de l'histoire économique et sociale au management public et à la gouvernance. Il est actuellement directeur du Centre d'études en gouvernance à l'Université d'Ottawa.

Gilles Paquet, CM, MSRC, has authored or edited some twenty-five books and written a large number of papers and chapters in books on issues ranging from the economic history of Canada to social and industrial development, public management and governance. He is currently the Director of the Centre on Governance at the University of Ottawa.

John Polanyi, PC, CC, O.Ont., Nobel Laureate, FRSC, is a professor at the University of Toronto. His current research centres on the molecular motions in chemical reactions at surfaces, including the printing of molecular scale-patterns. He is a Fellow of the Royal Societies of Canada, of London and of Edinburgh, also of the American Academy of Science, the Russian Academy of Sciences, and the Pontifical Academy of Rome. His awards include the 1986 Nobel Prize in Chemistry, and the Royal Medal of the Royal Society of London. In addition to his scientific publications, he has written over one hundred articles on the government of science and on the control of armaments, and has co-edited a book, *The Dangers of Nuclear War*.

John Polanyi, PC, CC, O.Ont., Nobel Laureate, FRSC, est professeur à University of Toronto. Ses recherches actuelles portent sur les déplacements moléculaires dans les réactions chimiques en surface, y compris l'impression des configurations moléculaires. Il est membre des Sociétés royales du Canada, de Londres et d'Édimbourg, de l'American Academy of Science, de l'Académie des sciences de Russie et de l'Académie pontificale de Rome. Prix Nobel de chimie en 1986, il a également reçu la médaille royale de la Royal Society of London. En plus de ses publications scientifiques, il a écrit plus d'une centaine

d'articles sur l'administration des sciences et le contrôle des armements et a co-édité le livre *The Dangers of Nuclear War*.

J. Anthony VanDuzer is an associate professor and former Vice-Dean of the Common Law Section of the Faculty of Law at the University of Ottawa. At the law school, Professor VanDuzer teaches courses in business law, including corporate law, corporate finance and international business transactions. He has also taught in the University of Ottawa's Executive MBA program as well as delivering seminars in China, Russia, France, Vietnam and Kyrgyzstan. Professor VanDuzer is the author of two books and numerous articles on business law. Outside the university, he has worked as an advisor to Canadian and foreign governments on corporate and competition law issues. Prior to joining the Common Law Section in 1989, he practised corporate and commercial law with Fasken & Calvin (now Fasken Campbell).

J. Anthony VanDuzer est professeur agrégé et ancien vice-doyen de la Faculté de droit (Common Law) de l'Université d'Ottawa. Il y enseigne le droit commercial, y compris le droit des entreprises, les finances en milieu d'entreprise et les transactions commerciales internationales. Il a donné des cours dans le programme de maîtrise en administration des affaires (MBA) pour cadres de l'Université d'Ottawa et a animé des séminaires en Chine, en Russie, en France, au Vietnam et au Kirghizstan. M. VanDuzer a également publié deux livres et de nombreux articles sur le droit commercial. Hors du cadre universitaire, il a travaillé en tant que conseiller auprès de gouvernements étrangers et canadien sur les questions touchant le droit des entreprises et les aspects juridiques de la concurrence. Avant de rallier la section de la Common Law en 1989, il a pratiqué le droit commercial et le droit des entreprises au cabinet Fasken et Calvin (maintenant Fasken Campbell).

Donna Winslow is an anthropologist and associate professor at the University of Ottawa. She has done field work in Canada and around the world in South East Asia, the South Pacific and Central America. From 1995 to 1997 she served as a technical advisor to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia and conducted research for the Commission on military culture, which was published as a book, entitled *The Canadian Airborne Regiment in Somalia: A Socio-Cultural Inquiry*. She is currently doing research in two major areas: Army culture and how that affects the conduct of operations; and inter-organizational tensions in peace operations in the former Yugoslavia.

Donna Winslow est anthropologue et professeure agrégée à l'Université d'Ottawa. Elle a travaillé sur le terrain au Canada et à l'étranger en Asie du Sud-Est, dans le Pacifique Sud et en Amérique centrale. De 1995 à 1997, elle était conseillère technique auprès de la Commission d'enquête sur le déploiement des forces armées canadiennes en Somalie et fait de la recherche pour la Commission sur la culture militaire, recherche qui a été publiée dans un livre intitulé *Le Régiment aéroporté du Canada en Somalie: une enquête socio-culturelle*. Ses travaux actuels portent sur les deux principaux points suivants : la culture militaire et son incidence sur le déroulement des opérations et les tensions entre divers organismes lors des opérations de maintien de la paix dans l'ex-Yougoslavie.